INDEX.

ABATEMENT. See DOWER; GUARDIAN AND WARD, 1.

Common-law rule that actions on penal statutes do not survive, applies to penal statutes of United States, and this rule is not altered by state statutes allowing suits on state penal statutes to be prosecuted after offender's death. *Schreiber* v. *Sharpless*, 338.

ACKNOWLEDGMENT. See DEED, 5.

ACTION. See BILLS AND NOTES, 20, 21; CONTRACT, 2, 20, 29; EASEMENT, 1; FRAUDS, STATUTE OF, 7; MALICIOUS PROSECUTION, 5; MUNICIPAL CORPORATION, 26–28; NEGLIGENCE, 11, 12, 31; PATENT, 6; TROVER, 3.

1. Lies for knowingly permitting third person to use your property in manner, *per se*, injurious to adjacent land. *Topf* v. *West Shore Co.*, 614.

2. Promise by A. to B., who has assigned certain goods to A., to pay amount owed by B. to his employees for labor on the goods, will not render A. liable to action by one of the employees. *Morrill* v. *Lane*, 543.

3. If chattel in possession of bailee for hire, is injured by negligence of third person, and repaired by bailor and cost charged to bailee, at his request, latter, although he has not paid such cost, may maintain action of tort against person causing damage. *Brewster* v. *Warner*, 544.

4. Where partners having distinct interests have been made the victims of a fraud, fact that fraud was contrived against them all and same means were used to deceive them all, will not entitle them to maintain joint action for relief, unless it was through joint transaction that fraud was accomplished. *Levering* v. *Schnell*, 478.

5. Action for injuries to person does not survive as against wrongdoer's executor. *Starley* v. *Bircher*, 478.

6. Obligation resting upon innkeeper to keep his guest safe, is one imposed by law, and not growing out of contract, and for violation of, proper action is case. *Id.*

ACTS OF CONGRESS.

1874, Revised Statutes.
- Sect. 1007. See ERRORS AND APPEALS, 7.
- Sect. 2503. See UNITED STATES.
- Sect. 2505. See UNITED STATES.
- Sect. 4283. See ADMIRALTY, 1.
- Sect. 4284. See ADMIRALTY, 1.
- Sect. 4285. See ADMIRALTY, 1, 2.

1875, March 3. See REMOVAL OF CAUSES, 1, 7.
- March 3. See UNITED STATES COURTS, 5.

1883, March 3. See UNITED STATES.

ADMINISTRATOR. See EXECUTORS AND ADMINISTRATORS.

ADMIRALTY.

1. U. S. limited liability act of March 3, 1851, in favor of shipowners, etc., Rev. Stat. §§ 4283–85, applies to injury to person as well as injury to property. *Rounds* v. *S. S. Co.*, 614.

2. Proceedings and decree under said § 4285 in U. S. District Court bar to action in state court to recover for personal injuries received in marine collision which was basis of proceedings in District Court. *Id.*

3. DEMURRAGE, 153.

AGENT. See BANK, 2; DAMAGES, 8; FORMER RECOVERY; INJUNCTION, 7; INSURANCE, 1, 12, 13; RAILROAD, 3, 8; SAVINGS BANK; TROVER, 6; TRUST AND TRUSTEE, 1.

1. General agent is one authorized to transact all business of principal, or all his business of some particular kind. *Furnace Co.* v. *Mfg. Co.*, 798.

2. In case of general agent, law permits usage to enter into and enlarge liability of principal, in respect to contracts made by agent. *Id.*

3. Under resolution of corporation engaged in manufacture of pig iron, appointing A. B. "sole agent for the consignment and sale of its entire product, he to receive a commission," &c. *Held*, that agent so appointed had right to contract, through broker, for sale of iron to be manufactured and delivered in future. *Id.*

4. It cannot be presumed that local station agent has general authority to contract for furnishing cars to shippers to other stations than his own. *Railway Co.* v. *Stats et al.*, 339.

5. Agency cannot be proved by proof of oral declarations of supposed agent. *Id.*

6. Railway companies not responsible for declarations or admissions of any of their servants beyond immediate sphere of their agency and during transaction of business in which they are employed. *Id.*

7. Employment of canvasser for sale of subscription books, confers no authority to receive payment for books sold, but not delivered by him, nor ever in his possession. *Chambers* v. *Start*, 674.

8. On contract not under seal with agent in his own name for undisclosed principal, either may sue: but if principal sues defendant is entitled to be placed in same position at time of disclosure of principal as if agent had been real contracting party. *Balto. Co.* v. *Fletcher*, 478.

9. Debtor applied to creditor's agent for extension of time of payment of loan, creditor being non-resident corporation, and agent resident of state, acting generally for creditor as to loans therein. In first interview agent stated he would consult home office, and in another interview said he was ready to enter into arrangement that was thereupon made. *Held*, that debtor might properly infer that agent received principal's sanction. *Union Mut. L. Ins.* v. *Slee*, 614.

10. In undivided and continuous negotiation between A. and B., A. at one time represented one principal and at another time a different one. *Held*, that A. notwithstanding change of principal was entitled to assume that all statements of fact made to him by B., were repeated so long as not corrected. Negotiation resulted in written contract. *Held*, that statements made by B. after contract were inadmissible to show what influenced A.'s principal to sign contract, but were admissible to corroborate evidence as to what statements B. made before contract, it being admitted that B. before and after contract made statements as to same matters and it being shown that subsequent statements were asked and given as repetition and confirmation of preceding. *Fuller* v. *Atwood*, 614.

AMENDMENT. See LIMITATIONS, STATUTE OF, 10.

APPEALS. See ERRORS AND APPEALS.

ARBITRATION. See CONTRACT, 10, 14.

1. To make award binding parties must be notified of hearings and arbitrators must act together. *Wood* v. *Helme*, 615.

2. On submission of "all demands between the parties" thereto, award is no bar to claim not in fact submitted or considered by arbitrators. *Inh of Mt. Desert* v. *Inh. of Tremont*, 65.

3. Award broader than submission, and entire, or with its several parts so connected as to be conditional and dependent, is void; but if one part is complete and independent and covered by submission, it will be upheld; and even part not within submission will become binding if accepted. *Ellison* v. *Wealhers*, 478.

4. No new consideration necessary to uphold subsequent ratification of unauthorized award. *Id.*

5. Arbitrator not competent witness to impeach his own award. *Id.*

ARBITRATION.

6. Award, though made upon mere common-law arbitration, is *prima facie* conclusive between parties as to all matters submitted to arbitrators, and this notwithstanding defendant has failed to comply with its requirements. *Groat* v. *Pracht*, 339.

7. Where plaintiff's claim is simply for money due for materials and labor on building of defendant, and it appears that matters in respect to such building were submitted to arbitrators who made an award that defendant give check for certain amount, surrender certain note, and receipt two accounts, one against plaintiff and one against father-in-law: *held*, that award was bar to action on original claim. *Id.*

ARREST. See CONSTITUTIONAL LAW, 26; CONTEMPT.

ASSESSMENT. See TAX AND TAXATION, 3–6.

ASSIGNMENT. See ATTORNEY, 3, 4; CHECK; CONFLICT OF LAWS, 1, 2; LIMITATIONS, STATUTE OF, 7; MECHANICS' LIEN, 2; PARTNERSHIP, 3; REMOVAL OF CAUSES, 7; SALE, 2; WAREHOUSE RECEIPT.

1. Reservation of exempt articles in partnership assignment is inoperative, and does not, therefore, render assignment void for uncertainty. *Goll* v. *Hubbell*, 799.

2. Of wages to fall due from any future employer, with whom no contract exists, void. *Kennedy* v. *Tiernay*, 674.

3. Reservation in assignment for benefit of creditors of "all such articles of household furniture and other effects as are exempt by law from seizure and sale on execution," void for uncertainty, and because such reservation is fraudulent as giving to assignor a right at any time to withdraw by selection part of goods assigned. *Goll* v. *Hubbell*, 675.

ASSUMPSIT. See ACTION, 2.

In action of, to recover money overpaid on settlement, it was proved that defendant had money in his hands that in good conscience belonged to plaintiff. *Held*, that plaintiff was entitled to recover, although special ground upon which he claimed to establish overpayment failed. *Bates* v. *Quinn*, 544.

ATTACHMENT. See CONFLICT OF LAWS, 3; CORPORATION, 7; EVIDENCE, 13; MECHANICS' LIEN, 1; OFFICER, 2; WAREHOUSE RECEIPT, 2.

1. Affidavit for, stating that defendant has disposed of or assigned, &c., "his property or any part thereof," or is about to do so, with intent, &c., is insufficient. Perjury could not be assigned thereon. *Rubber Co.* v. *Knapp*, 675.

2. To garnishee proceedings in courts of this state, it is no sufficient answer that debt of garnishee to defendant is by laws of state where both defendant and garnishee reside, exempt from seizure under such process. *Railroad* v. *Thompson*, 339.

3. Foreign corporation coming into this state and leasing property and doing business here may be garnisheed for debt due non-resident employee, although debt was contracted outside of state. *Id.*

4. Garnishee proceedings bind only amount due employee at date of service of process and not amounts subsequently earned, even under prior contract. *Id.*

5. At time of service of writ firm was indebted to defendant, and member of firm held unmatured note of defendant, secured by collateral, for less amount. At maturity, amount of note was, by agreement between payee and defendant, credited upon firm's indebtedness, and note and security surrendered. *Held*, that firm was to be charged with its indebtedness to defendant, without deducting amount of note. *Donnell* v. *Railroad Co.*, 799.

6. Alleged trustees on an afternoon directed their book-keeper to send defendant check for amount due him. Check was thereupon made. At 8 P. M., writ was served upon trustees. They notified book-beeper next morning and were informed by him that he had mailed check at 7.15 A. M., without notice of trustee process. Check was duly presented and paid. *Held*, that trustees were not chargeable. *Jordon* v. *Jordon*, 66.

ATTORNEY. See CONTEMPT; CRIMINAL LAW, 17; DAMAGES, 8; ERRORS AND APPEALS, 8; SLANDER AND LIBEL, 4; PRACTICE, 4; SHERIFF, 5

ATTORNEY.

1. Appointed by court to defend one on trial of indictment not entitled to recover of county for his services. *Johnson* v. *Whiteside Co.*, 615.

2. Has lien on money collected for client for general balance for services and disbursements; and when client has deceased before rendition of judgment, lien secures charges for services performed for intestate as well as for administrator, who has entered to prosecute. *Hurlbert* v. *Brigham*, 615.

3. Agreement of, with client, that attorney shall have lien upon certain judgment to be recovered for specified sum, as compensation for services, constitutes valid equitable assignment of judgment *pro tanto* which attaches as soon as judgment is entered. *Terrey* v. *Wilson*, 143.

4. Such assignment is superior to claim of judgment-debtor to set off judgment purchased after entry of judgment against himself and before he had notice of assignment. *Id.*

AWARD. See ARBITRATION.

BAGGAGE. See COMMON CARRIER, 10–13.

BAIL.

Is discharged by any judicial act depriving him of right to arrest and surrender defendant. *State* v. *Glenn*, 268.

BAILMENT. See ACTION, 3; TROVER, 4.

Livery stable-keeper letting horse for hire for trip, impliedly warrants that he is suitable for purpose. *Windle* v. *Jordan*, 66.

BANK. See CHECK; SAVINGS BANK; SURETY, 11.

1. Authority of cashier outside of ordinary duties may be by parol and collected from circumstances. *Martin* v. *Webb*, 144.

2. A. lent money to B. for his own use, and as security for its repayment, and on his false representation that he owned, and had transferred to A. a certificate of stock to an equal amount in national bank of which B. was cashier, received from him such a certificate, written by him in one of the printed forms which the president had signed and left with him for use in president's absence, and certifying that A. was owner of that amount of stock "transferrable only on the books of the bank on the surrender of this certificate." Bank never ratified, or received any benefit from transaction. *Held*, that A. could not maintain action against bank to recover value of certificate; and that such action could not be supported by evidence that in one or two other instances stock was issued by B. without any certificate having been surrendered; and that shares, once owned by B., and pledged by him to other persons before issue of certificate to A., were afterwards transferred to president, with approval of directors, to secure debt due from B. to bank, without evidence that such issue of stock by B. was known or recognised by officers of bank. *Moores* v. *Bank*, 408.

BANKRUPTCY. See LIMITATIONS, STATUTE OF, 12, 13.

BILL OF EXCEPTIONS. See ERRORS AND APPEALS, 8.

BILLS AND NOTES. See CHECK; DURESS, 1, 2; HUSBAND AND WIFE, 9; LIMITATIONS, STATUTE OF, 1, 2, 3; MORTGAGE, 2, 5; PARTNERSHIP, 10; PRESUMPTION, 1; SURETY, 11.

I. *Form; Consideration; Rights of parties, &c.*

1. Material alteration of note, at instance of payee and without knowledge of maker, releases latter. Addition of a party as maker is material alteration. *Nicholson* v. *Coombs*, 193, *and note.*

2. Word "executed," as used in answer charging that note was changed after it had been "executed and delivered," implies complete and perfect contract. *Id.*

3. That note signed by agent with principal's name, is drawn to agent's order and sold by him, not sufficient to impute bad faith to purchaser. *Read* v. *Abbott*, 208.

4. Payment of interest in advance for certain time on note not conclusive

BILLS AND NOTES.
evidence of contract to extend time of payment of note for that time. *Gard* v. *Neff*, 208.
5. Waiver of apprisement, stay, exemption and homestead laws does not destroy negotiability of note. *Lyon* v. *Martin*, 340.
6. Maker of note may show that he was surety for endorser, and that holder knew this before taking note. *Hall* v. *Bank*, 144.
7. Instrument in form "Building committee will pay G. W. T. the sum of $126.25, and charge to (signed) N. and L.," is inland bill of exchange, and imports a consideration without words "value received;" no consideration need be alleged in declaration. *Taylor* v. *Newman*, 144.
8. Endorser who has been obliged to pay note may show by parol that maker acted as agent of defendant (whose name did not appear on note) in obtaining endorsement. *Sauer* v. *Brinker*, 144.
9. Erasure of payee's name and substitution of another, after delivery, by party interested, is material change of note. *Davis* v. *Bauer*, 744.
10. One of several makers of note given for accommodation of payee, and so altered, who voluntarily pays same at maturity, cannot recover against another maker. *Id.*
11. Draft drawn and endorsed by drawer and placed in the hands of payee, who was also drawee, but never accepted by him, in legal effect a promissory note. *De Vaughn* v. *Hargabook*, 675.
12. Seller of, in good faith without endorsement, at rate of discount indicating that purchaser has compensation for his risk, does not impliedly warrant solvency of makers or endorsers. *Milliken* v. *Chapman*, 66.
13. Where debtor entitled to make payment of antecedent debt gives therefor promissory note payable on demand, note is payment conditional on its being met, and is founded on valuable consideration. *Stott* v. *Fairlamb*, 371, *and note.*
14. Reservation in note of "right to pay this note before maturity in instalments of not less than five per cent. of the principal thereof at any time the semi-annual interest becomes payable," does not render same uncertain as to amount or time, and does not prevent note being negotiable. *Riker* v. *Sprague*, 478.
15. If time of payment named in note must certainly come, although precise day be not specified, it is sufficiently certain. *Id.*
16. After note had been protested maker asked "for additional time as a favor." Holder said he "was willing to show any reasonable favor." Maker then said he would give paper drawn on his customers, and did so when he got it. No time was named. *Held*, that holder retained right to sue maker at pleasure; and that as proceeds of draft did not pay note, endorsers were not discharged. *Edwards* v. *Clair Co.*, 409.
17. Where party in full possession of all his faculties and able to read, even though slowly and with difficulty, signs promissory note under belief that it is instrument of different character, without reading instrument but relying on reading and representations of stranger, he is liable to *bona fide* holder. *Ort* v. *Fowler*, 340 and 569, *and note.*
18. Where party executes note to order of fictitious firm, and thereafter holder endorses note in firm's name, *bona fide* endorsee may recover against maker, although latter was ignorant that firm name was fictitious. *Id.*
II. *Endorsement, Acceptance, &c.*
19. Endorsement "for collection" mere warrant of attorney authorizing endorsee to collect amount due on draft for payee. *Central Railroad Co.* v. *Bank*, 675.
20. Second endorsee on such draft receiving money from drawees, receives that which belongs to original payee, and this puts them in such privity with such payee that, upon failure to pay on demand, an action for money had and received would lie. *Id.*
21. Reception by one of money belonging to another, and demand by that other, makes all the privity necessary to maintain action for money had and received. *Id.*
22. Note transferred after maturity passes into hands of endorsee subject

BILLS AND NOTES.
only to equities and defences connected with note itself. Missouri statute of set-off (R. S. 1879, sect, 3868), does not apply to negotiable paper. *Cutler* v. *Cook*, 145.

23. Of successive endorsers, prior one must *prima facie* indemnify subsequent one; but whole circumstances attendant upon making, issue and transfer of bill or note may be referred to in order to ascertain true relation to each other of parties who put their signatures upon it. *Macdonald* v. *Whitfield*, 66.

24. Note bore upon its face statement that it was issued as collateral to maker's draft accepted by third party. In action against endorsers: *Held*, that undertaking of maker's was contingent; that amount due at maturity was uncertain; that note was not negotiable, and that endorsers, as such, were not liable. *Bank* v. *Sprague*, 478.

25. Where telegram is sent authorizing draft to be drawn, and countermanding telegram is afterward sent, and on faith of first telegram, which only was exhibited to cashier, draft was discounted by bank, drawee cannot be held liable as acceptor. *Bank* v. *Clark*, 544.

26. Drawee of draft will not be held liable for breach of promise in not accepting, unless there was promise to accept it at time draft was drawn. *Id.*

27. Where negotiable note appears properly endorsed by payee and endorsement is without date, presumption is that it was so endorsed before maturity, and that plaintiff in action thereon is *bona fide* holder. This presumption not overthrown by its appearing that plaintiff's counsel is also counsel of payee in other actions; that general collecting agent of payee is witness for plaintiff on trial (there being no showing as to how he came to be witness or that he was not regularly subpœnaed;) or that plaintiff when he endorsed note to bank for collection waived protest both for himself and payee. *Lyon* v. *Martin*, 340.

III. *Presentment, &c.*

28. Protest not necessary where endorsers have waived demand on maker and notice. *Riker* v. *Sprague*, 478.

29. Joint note of husband and wife is valid obligation of husband, although wife is not liable at law thereon. *McClelland* v. *Bishop*, 341.

30. Where such note is payable at future time, but at no particular place, and husband after making same, abandons his place of residence, and deserts to some place unknown to holders, which they cannot after diligent inquiry ascertain, when it falls due, they are excused from making personal demand upon him. In such case personal demand on wife with due notice of non-payment to endorser, is sufficient. *Id.*

31. Where there is a series of notes all secured by mortgage which stipulates that in default of payment of any note, "then each and all should fall due, and this mortgage to become absolute as to all said notes remaining unpaid at the happening of such default." *Held*, that upon default mortgage may be foreclosed for whole debt, but that such stipulation did not operate to vary or extinguish the obligations expressed on face of notes themselves for general purposes: for purpose of demand and notice to charge endorsers, such notes are to be deemed as due according to their terms. *Id.*

BOND. See OFFICER, 3.

BOUNDARIES. See EJECTMENT, 5; MUNICIPAL CORPORATION, 36.
Boundary line settled by adjoining owners by parol, when followed by possession, binds owners and their grantees. *Grim* v. *Murphy*, 745.

BROKER. See AGENT, 3.

1. May recover compensation from both parties when he merely brings parties together, they making their own contract. *Orton* v. *Scofield*, 799.

2. If broker agrees to buy and hold certain stock for customer, who pays part of purchase-money, agreeing to pay interest on sums advanced by broker, and, in case stock depreciates, to make a "margin" of certain sum per share, this does not create relation of pledgor and pledgee, and after failure of customer to make advances, a sale at broker's board, without notice, will not make broker liable for conversion. *Covell* v. *Loud*, 208.

BURDEN OF PROOF. See LIMITATIONS, STATUTE OF, 6.

CASES AFFIRMED, COMMENTED ON, OVERRULED, ETC.

Aldrich *v.* Howard, 7 R. I. 199, distinguished; Couch *v.* Steel, 3 El. & B. 402, discussed. *Grant* v. *Slater Co.*, 484.

Beach *v.* Abbott, 4 Vt. 605, and Rood *v.* Scott, 5 Id. 263, distinguished. *Rider* v. *Sheldon*, 748.

Brackett *v.* Wait, 6 Vt. 411, distinguished. *Hill* v. *Murray*, 622.

Butler *v.* Dorman, 68 Mo. 298, followed. *Chambers* v. *Short*, 674.

Cleland *v.* Hedley, 5 R. I. 163, affirmed. *Wood* v. *Helme*, 615.

Corby *v.* Burns, 36 Mo. 194, distinguished. *State* v. *Case*, 152.

Duke of Bedford *v.* Trustees of the British Museum, 3 My. & K. 552, principle of, applied. *Sayers* v. *Collyer*, 69.

Hart *v.* Swayne, 7 Ch. Div. 42, and In re Turner and Skelton, 13 Id. 130, disapproved. *Jolliffe* v. *Baker*, 162.

Hickman *v.* Kunkle, 27 Mo. 401, overruled. *Deardorf* v. *Thatcher*, 483.

Hobbs and Wife *v.* The London and Southwestern Railroad Co., L. R., 10 Q. B. 111, distinguished. *Railway Co.* v. *Kempt*, 412.

Ingalls *v.* Dennett, 6 Me. 79, commented on. *Donnell* v. *Railroad Co.*, 799.

Kendillon *v.* Maltby, Car. & M. 402, dissented from. *Munster* v. *Lamb*, 12.

Lake Shore and Michigan Southern Railway Co. *v.* Chicago and Western Indiana Railroad Co., 100 Ill. 21, distinguished. *Railroad* v. *Jacobs*, 801.

Lamb *v.* Eames, L. R., 6 Ch. 597; In re Hutchinson and Tenant, 8 Ch. Div. 540; Curnick *v.* Tucker, L. R., 17 Eq. 320, and Le Marchant *v.* Le Marchant, L. R., 18 Eq. 414, commented on. *In re Adams and Kensington Vestry*, 78.

Munday *v.* Clements, 58 Mo. 577, overruled. *Cutler* v. *Cook*, 144.

Norton *v.* London and Northwestern Railway Co., 9 Ch. Div. 623, and Surndon Waterworks Co. *v.* Wilts and Berkshire Canal Navigation Co., L. R., 7 H. L. 697, considered. *Bonnert* v. *Railway Co.*, 70.

Oliver *v.* Morgan, 10 Heisk. 322, departed from. *Oliver* v. *Chemical Works*, 76.

Reynolds *v.* Wheeler, 10 C. B. (N. S.) 561, approved. *Macdonald* v. *Whitfield*, 66.

State ex rel. *v.* Lansdale, 49 Wis. 348; Stuart *v.* Allen, 45 Id. 158, distinguished. *Cleveland* v. *Burnham*, 147.

Steele *v.* McKinlay, 5 App. Cas. 754, distinguished. *Macdonald* v. *Whitfield*, 66.

Taylor *v.* Phœnix Ins. Co., 47 Wis. 365, distinguished. *King* v. *Ins. Co.*, 148.

The Ohio Wesleyan Female College *v.* Love's Ex'rs., 16 Ohio St. 20, cited and distinguished. *Johnson* v. *Trustees*, 341.

Tillinghast *v.* Wheaton, 8 R. I. 536, affirmed. *Providence Inst. for Savings* v. *Teft*, 680.

Troy *v.* Aiken, 46 Vt. 55, distinguished. *McGuire* v. *Kiveland* 548.

Wright *v.* Bircher, 72 Mo., followed. *Sutherford* v. *Stewart*, 683.

CEMETERY ASSOCIATION. See TAX AND TAXATION, 5, 6.

CERTIORARI. See MUNICIPAL CORPORATION, 13, 41–43.

1. The rule that special tribunal having judicial functions, whose power to act in particular case depends upon determination of certain facts must allow hearing to persons interested, does not prevail where act done is purely discretionary. In such case review cannot be had by *certiorari*. *State* v. *Rector*, 208.

2. Person who prosecuted petition to alter road over his land before commissioners of highways, and was present at every step taken, will not be allowed by *certiorari* to question legality of proceeding in case decision is adverse to him. Office of writ at common law, and when issued as a matter of right and when on cause shown by petition. *Supervisors* v. *Mayoon*, 409.

CHARITY. See CONTRACT, 26–28.

1. Testamentary gift for purposes both public and benevolent, when will shows it to have been inspired by philanthropy and aimed at permanent good, is charitable gift. *Pell* v. *Mercer*, 486.

CHARITY.

2. Bequest in trust for such works of religion or benevolence as executors may select, good when it appears that benevolence is used in legal sense of charity. *Pell* v. *Mercer*, 486.

3. Law of charitable uses as administered by English chancery in its regular jurisdiction is part of law of Rhode Island. Supreme Court having full chancery powers by statute has so much of *cy pres* power as is exercised by English chancery without recourse to prerogative powers delegated to it in particular cases by sign manual of crown. *Id.*

4. Testamentary disposition "one-quarter part of my trust property to be given to educational institutions similar to those mentioned in article thirteen, and the remaining quarter part of my trust property to be given to charitable institutions similar to those mentioned in article thirteen." *Held*, not invalid because indefinite. *Trust Co.* v. *Olney*, 615.

CHATTEL MORTGAGE. See MORTGAGE, II.

CHECK. See ATTACHMENT, 6.

When not drawn on particular fund, nor for whole sum to depositor's credit, does not, before presentment and acceptance, operate in law or equity as assignment of so much of deposit. *Dickinson* v. *Coates*, 181, *Bank* v. *Coates*, 188, *and note.*

CITIZENSHIP. See REMOVAL OF CAUSES.

CITY. See MUNICIPAL CORPORATION.

COLLATERAL SECURITY. See BILLS AND NOTES, 24. PLEDGE.

COMMON CARRIER. See FERRY; SALE, 4; SLEEPING CAR COMPANY.

1. When duly authorized agent of railroad company receives personal property to be transported as baggage, company must account for same as baggage although strictly it might not be. *Railroad Co.* v. *Conklin*, 544.

2. Condition in bill of lading that carrier shall have benefit of insurance upon damaged goods, not unreasonable. *Rintoul* v. *Railroad Co.*, 294, *and note.*

3. Where it is shown that goods were injured while being transported over defendants' railroad, and that accident, in ordinary course, would not have happened if those in charge had used ordinary care, presumption is that accident arose from defendants' negligence. *Id.*

4. How far can carrier exempt himself from negligence by special contract. *Id, note*, p. 300. See 7.

5. Is bound to receive and will be liable for cars of another railroad company, just as if property belonged to an individual. *Railway Co.* v. *Railway Co.*, 410.

6. In this case, defendant company's principal business was switching cars for other companies. Plaintiff corporation ordered certain car taken to distillery, which was done, and car unloaded. It was then, without plaintiff's orders, taken to sugar refinery to be loaded; on same day refinery and car were burned. *Held*, that defendant was liable as common carrier for value of car. *Id.*

7. Cannot exempt himself by contract from liability for delay in transportation caused by his own negligence. *Dawson* v. *Railroad Co.*, 676.

8. Not bound to provide freight facilities for extraordinary occasions. *Id.*

9. Receiving property for transportation, without agreement to contrary, undertakes to carry and deliver it within reasonable time, regardless of extraordinary pressure of business. *Id.*

10. "Baggage" includes only such articles of convenience or necessity as are usually carried by passengers for their personal use, and does not include samples. *Railroad Co.* v. *Capps*, 376, *and note.*

11. Permission given by railroad agent to passenger to leave trunk containing samples for few days at station to which it had been checked, agent not knowing that trunk contained samples, does not render company liable for trunk and its contents except as a warehouseman. *Id.*

12. *Semble*, where railroad company receives articles for transportation as baggage, knowing that they are not, it will be responsible therefor as a common carrier. *Id.*

COMMON CARRIER.

13. Who is responsible for baggage. *Railroad Co.* v. *Capps*, 376, *note.*

14. Insurance company having paid loss suffered by insured in consequence of fire for which common carrier was also answerable, may sue carrier, in his name to its use, and measure of damages is full value of goods destroyed. If only part of loss has been paid by insurer, insured is entitled to residue, and carrier cannot set up insurer's payment of his part of loss as partial satisfaction. *Railroad Co.* v. *Jurey*, 479.

15. Where upon sale of round trip ticket with coupons attached for passage over two roads, special contract was made that passenger should sign his name at terminal point before agent there, before he could return on the ticket, such contract controlled; and on passenger's failure to sign, company could eject him. This being done politely by conductor, passenger was not entitled to damages. *Moses* v. *Railroad;* 799.

16. If one road passed him, other was not bound to. *Id.*

17. Fact that conductor of contracting road, upon return of passenger detached last coupon before refusing and returning it and ticket, did not alter the case. *Id.*

18. Railroad company may charge reasonable amount more when fare is paid on train than it does at ticket offices. *Railroad* v. *Skillman*, 67.

19. One persistently refusing to pay such increased fare, after reasonable time in which to determine the matter, may lawfully be removed from train. *Id.*

20. Expulsion may be at place other than depot or usual stopping place, provided care is taken not to expose person to serious injury or danger; and no right to remain on train is acquired by offering to pay after train has been stopped for expulsion. *Id.*

21. LIABILITY OF LIVE STOCK CARRIERS, 753.

CONDITIONAL SALE. See SALE, 5.

CONFLICT OF LAWS. See ABATEMENT, 1; ATTACHMENT, 2, 3; CONSTITUTIONAL LAW, 17, 27; CONTRACT, 23; LIMITATIONS, STATUTE OF, 8; PARENT AND CHILD, 4; RECEIVER, 1, 2; SURETY, 9; WAREHOUSE RECEIPT, 1.

1. Decree appointing assignee or receiver has no extra territorial effect on debtor's real estate. *Heyer* v. *Alexander*, 268.

2. Non-resident debtor cannot assign his real estate in state to prejudice of domestic creditors. *Id.*

3. Insolvency laws of one state not enforced in another by giving effect to statutory assignment of debtor's effects, even as against attaching creditor of debtor's state. *Rawn* v. *Pearce*, 745.

4. Cause of action which accrued in one state, under statute making every railroad corporation liable for damages sustained by employees in consequence of negligence of co-employees, may be enforced in another state where common-law rule on subject prevails. *Herrick* v. *Railway Co.*, 27, *and note.*

5. That such statute only applies to corporations operating railroads does not make it conflict with provision of Fourteenth Amendment of Federal Constitution that no state shall deny to any person within its jurisdiction the equal protection of the laws." *Id.*

6. Subject to exclusive authority national government, by its own judicial tribunals, to determine whether persons held in custody by authority of United States courts or commissioners thereof, or by officers of general government acting under its laws, are so held in conformity with law, states have right by their own courts to inquire into grounds upon which any person, within their respective territorial limits, is restrained of his liberty, and to discharge him if restraint is illegal, notwithstanding such illegality arise from violation of constitution and laws of United States. *Robb* v. *Connolly*, 479.

CONSIDERATION. See ARBITRATION, 4; BILLS AND NOTES, 7, 13; CONTRACT, 6, 15, 26, 27; FRAUDS, STATUTE OF, 4, 7; PAYMENT, 2; SURETY, 4.

CONSTITUTIONAL LAW. See CONFLICT OF LAWS, 5, 6; COPYRIGHT, 2; COURTS, 3; CRIMINAL LAW, 1, 12, 22; EMINENT DOMAIN; EQUITY, 4; EVIDENCE, 6; MUNICIPAL CORPORATION, 17, 20; OFFICER, 4, 5.

I. *Powers of Legislature, and Generally.*

1. Congress can make United States Treasury notes legal tender in peace or war. *Legal Tender Cases*, 342.

2. Time when amendment to constitution considered to be adopted. *Arrowsmith* v. *Hormening*, 259, *note*.

3. Statute may authorize selectmen of town to allow such ringing of mill bell as had previously been judicially determined to be private nuisance. *Sawyer* v. *Davis*, 676.

4. Mere grant of right to build railroad between given termini, creates no implied obligation to not thereafter grant right to build parallel railroads between same termini or that other railroads shall not be allowed to cross the first. *Con. Railway Co.* v. *Union Railway Co.*, 269.

5. Incumbent of county office not protected by prohibition of federal constitution against impairment of obligation of contracts. His salary may be diminished during his term of office, and a law so diminishing his salary after law takes effect, is prospective and not retroactive. *Harvey* v. *County Commissioners*, 545.

6. Provision in act to reorganize embarrassed corporation that all holders of mortgage bonds who do not, within given time, expressly dissent from plan of reorganization shall be deemed to have assented to it, and which provides for reasonable notice, is valid. *Gilfillan* v. *Canal Co.*, 209.

7. Act conferring corporate powers so special that it can apply, at any time, only to three certain cities, unconstitutional. *City* v. *Gillett*, 745, and 778, *and note*.

8. Act may be special where it applies to many particular and existing persons or things, and where it simply describes them as well as where it gives their names. *Id.*

9. Law attempting arbitrarily to change place of payment of negotiable paper (*e. g.*, county bonds) after sale and transfer thereof, cannot be upheld because it impairs the contract. *Dillingham* v. *Hook*, 545.

10. Where municipal corporation has, in due exercise of power conferred by legislature, assessed and levied tax, legislature may, by act retrospective in its terms, and which takes effect before such tax becomes due, annul the assessment, and vest in another body power to make assessment for that year. *State* v. *Railway Co.*, 676.

11. Act "to provide for the assessment and collection of taxes on bridges owned by joint stock companies, and property and franchises owned by telegraph companies" not a "special" law. *Id.*

12. Statute providing for granting of conditional pardons, and that, where conditions are violated, convict shall be arrested and governor and counsel shall examine case of such convict and "if it appears hy his own admission or by evidence that he has violated the conditions of his pardon," the governor, with advice of counsel, shall order convict to be remanded, and confined for unexpired term, *held*, constitutional. And that no notice or opportunity to be heard, need be given to convict. *Kennedy's Case*, 209.

13. Ordinance of Chicago, making owners, &c., of tug boats, engines, &c., liable for allowing emission of dense smoke from smoke-stacks, is not in violation of Sec. 8, Art 1, of Federal constitution, declaring that "Congress shall have power to regulate commerce," &c. *Harmon* v. *City*, 800.

14. A state has all power necessary for protection of property, health and comfort of public, and may delegate this power to local municipalities and resume it again when deemed expedient. *Id.*

15. Act entitled "An act to amend the charter of the Cairo & St. Louis Railroad Company," legalized election previously held, at which people voted in favor of subscription to stock of that company, and granted authority to issue bonds in payment of such subscription. *Held*, that this provision of the act was sufficiently covered by the title under constitution providing that "the private or local law which may be passed by the general assembly shall embrace more than one subject, and that shall be expressed in the title." *City* v. *Railroad Co.*, 342.

CONSTITUTIONAL LAW.

16. Statute of state of Virginia, Code of 1873, cap. 100, sec. 4, which forbids non-residents to catch fish for manufacture of manure and oil, and to manufacture manure and oil from fish caught within waters of that state, is not in violation of article IV. sec. 2, of U. S. constitution. *Chambers* v. *Church*, 479.

17. Contract to be executed wholly in Virginia, in violation of this statute, will not be enforced in Rhode Island. Nor can bill in equity be sustained in Rhode Island for account of profits of such contract which has been executed. *Id.*

18. Statute for abolition of system of remunerating prosecutors of pleas by fees and substitution of fixed salaries, but fixing salaries of different amounts arbitrarily and not by any general rule or according to population, is local or special act. *Freeholders* v. *Stevenson*, 745.

19. While prosecutor of pleas represents state in administration of justice, amount he is to receive from county treasury concerns county alone, and statute fixing salaries of such prosecutors is act regulating internal affairs of counties. *Id.*

20. Minnesota stat. of 1883 requires, as condition of right to practice as physician (except as to those engaged five years in practice in state), certificate of qualification from faculty of medical department of state university. Section 9 authorizes board to refuse certificate to those guilty of unprofessional or dishonorable conduct. Relator was refused certificate upon that ground. *Held*, 1. Appellant had right to be heard upon investigation as to his conduct. 2. "Unprofessional," in section 9, is used convertibly with "dishonorable." 3. Act not unconstitutional. 4. Relator not entitled to mandamus to secure review or reversal of determination of board. *State* v. *Examining Board*, 714, *and note.*

21. Where constitution requires certain formal rules to be complied with by legislature before bill becomes law, and appropriate office of journal is to record successive steps of legislative action, such journal will be sufficient evidence to overturn enrolled bill in conflict with it; but where constitution does not require amendment to be entered upon journal, but journal shows that original bill was amended, and is silent as to rescission of amendment, and enrolled bill contains no amendment, court will presume amendment was rescinded. *Chicot County* v. *Davies*, 269.

22. Not only enrolled bill, but legislative journals, and records and files of office of secretary of state, may be looked to for purpose of ascertaining whether act was duly passed. *Id.*

23. For law or constitutional provision to have retrospective operation, intent must be clearly expressed. So, where legislative charter provided that directors of corporation should be elected by vote of stockholders, allowing one vote for every share, and also provided that legislature should have no power to alter, suspend or repeal charter, and subsequently constitutional provision was adopted providing in general terms for cumulative voting at all elections of corporation directors, *Held*, that as there was nothing in this provision specially applicable to corporation in question, and as there were other corporations in existence when constitution was adopted, to which it could apply, in addition to those which might thereafter be incorporated, it would be held not to operate upon this particular corporation. *State* v. *Greer*, 480.

24. Right of corporators to vote at elections for directors is property right, and if mode of voting is prescribed by irrepealable charter, it is protected against constitutional or legislative enactment by provision of U. S. constitution prohibiting states from passing laws impairing obligation of contracts. *Id.*

II. *Powers of the Judiciary.*

25. Where court or office is established by legislative act apparently valid, and court has gone into operation, or office is filled and exercised under act, it is a *de facto* court or office, the legality of which cannot be called in question except in a direct proceeding by the state. *Burt* v. *Railroad Co.*, 534, *and note.*

26. It is declared in constitution of Kansas that no warrant shall be issued to seize any person, but on probable cause supported by oath or affirmation; therefore complaint or information filed in District Court charging defendant

CONSTITUTIONAL LAW.

with misdemeanor and verified on nothing but hearsay and belief, is not sufficient to authorize issuance of warrant for arrest of party therein charged, when no previous preliminary examination and no waiver of right to such examination has been had. *State* v. *Gleason*, 545.

27. In determining whether Supreme Court of state has given effect to state law impairing obligation of contract, Supreme Court of United States will decide for itself whether there is a contract and whether its obligation is impaired; and if decision of question as to existence of alleged contract requires construction of state constitutions and laws, it is not necessarily governed by previous decisions of state court, except when they have been so firmly established as to constitute rule of property. *Railroad Co.* v. *Palmes*, 66.

III. *Eminent Domain.*

28. Legislature may grant to telegraph company exercise of right of eminent domain. *Pierce* v. *Drew*, 544.

29. Additional servitude not imposed by appropriation of public highway under Pub. Sts. (Mass.) c. 109, for use of line of electric telegraph, by erection of poles and wires above surface of ground; and statute is constitutional, although it makes no provision for compensation to owner of fee in highway. *Id.*

30. By construction of ditch for purpose of preserving highway, waters of river were diverted from one part of land of riparian owner and thrown upon another part thereof so as to change condition and cut away portion of bank. *Held*, that there was a taking of his land within meaning of sects. 1236–7, R. S. Wis. *Smith* v. *Gould*, 676.

31. Even where fee of street is in public, construction of ordinary railroad along and over it is damage to abutting property, within constitutional provision for compensation for property damaged. *City* v. *Bayer*, 440, *and note.*

32. For injuries or annoyance which owner of abutting property shares in common with general public, he is not entitled to compensation, but for those damages which are peculiar to him, he may recover. *Id.*

33. Municipal corporation authorizing use of street by railroad is not liable in damages to abutting lotholder. *Id.*

34. For injuries of this kind single recovery can be had for whole damage to result from act. Measure of compensation is actual diminution in market value of premises. No personal inconvenience or annoyance, no interference with owner's trade or business, no decrease in rental value, and no temporary interruption or damage constitutes test. These things can only be considered as they may aid in determining actual depreciation of market value. And if owner receive benefits from road peculiar to himself, this should be considered. *Id.*

CONTEMPT.

No privilege from arrest exists against execution of attachment against solicitor for contempt in disobeying order of court made against him as officer of court. *In re Freston*, 67.

CONTRACT. See ACTION, 2, 6; BILLS AND NOTES, 4; COMMON CARRIER, 7, 9, 15; CONSTITUTIONAL LAW, 17; CORPORATION, 2, 5, 9; COVENANT, 2; INSURANCE, 1; MECHANICS' LIEN, 2; MUNICIPAL CORPORATION, 21; NEGLIGENCE, 10; PATENT, 7; PUBLIC POLICY.

1. When obligation is in alternative, right of election is with promissor. *Dessert* v. *Scott*, 144.

2. A. at request of C. recommended to him a builder, who orally promised to pay A. sum of money "for his trouble," and was employed by C. *Held*, that action therefor could not be maintained. *Holcomb* v. *Weaver*, 678.

3. Where physician agrees, for valuable consideration, not to practice in certain city "and vicinity," he is bound by his contract and can be enjoined, but injunction should define exactly what is meant by "and vicinity." *Zimmerman* v. *Devin*, 50, *and note.*

4. Between manufacturer of pig iron and person using same, that former will supply and latter purchase all pig iron which latter should need during ensuing season—fixing limit of time—such amount supposed about a certain

CONTRACT.
named quantity, is not wanting in mutuality. *Furnace Co.* v. *Manufacturing Co.*, 800.

5. Suit will not lie for money payable upon architect's certificate, without production thereof or evidence of waiver, express or implied; less evidence of waiver requisite when contract has been fully performed. *Byrne* v. *Sisters*, 209.

6. Waiver by sub-contractor of lien for materials furnished for erection of building, and discharge of principal contractor for liability therefor, constitutes sufficient consideration for promise by owner to pay for such materials. *Griswold* v. *Wright*, 801.

7. It seems that such promise is not within statute of frauds. *Id.*

8. In alteration or re-building of house, involving use of party-wall, owner must see that reasonable care and skill is exercised to prevent injury to adjoining property, and he cannot avoid responsibility by delegating work to third person. *Hughes* v. *Percival*, 93, *and note.*

9. Liability of employer for injuries resulting from work done by independent contractor. *Id., note.*

10. Where by building contract price to be paid extra or deducted on account of changes is left to architect and his decision made final, a fraudulent decision by him will not bind; and if it be shown that he has disregarded important, clearly established or obvious facts, *prima facie* presumption will be that he did so wilfully. *County of Cook* v. *Harms*, 269.

11. Erection of side track connecting with railroad, at expense of plaintiff, and subsequent erection of expensive car works, from which cars were delivered by means of side track, *held*, not to change revocable license into contract so as to estop railroad company from revoking license to connect side track with company's track. *Jackson & Sharp Co.* v. *Railroad*, 269.

12. Valuable services, which would, as between strangers, raise implied promise to pay, will not, when performed for person *in loco parentis*, even if partly performed after majority. *Cowell* v. *Roberts*, 677.

13. In action against estate of deceased person for services performed during lifetime, *Held*, that his will making provision for plaintiff was properly admitted in evidence as corroborative of defence that position of plaintiff was that of member of family, and as bearing upon supposed undertaking to pay wages. *Id.*

14. Under contract between L. and railroad company, L. agreed to furnish company with ice of given description, same to be subject to inspection and *approval* of company's agent. *Held*, that judgment of agent was conclusive, unless tainted with fraud or bad faith. *Lynn* v. *Railroad Co.*, 67.

15 Promise by sons, after their father's death, to pay the amount of a note given by him in consideration of its transfer to them and their not being troubled about it, there being no administrator of his estate nor any estate out of which the note could have been paid, is *nudum pactum*. *Schroeder* v. *Fink*, 68.

16. Agreement of corporation purporting to be made by "B., agent," and signed and sealed by him as such, and signed and sealed by other parties, the testimonium clause calling for seals, is deed of corporation. *Bradstreet* v. *Baker*, 677.

17. Instrument provided that company was to furnish and C. and D. were to receive, between certain dates, 5000 tons of ice at specified price, and that C. and D. were to pay cash in full at same price for all ice not received by them at last date, such ice to remain property of company. *Held*, that stipulated price was penalty and not liquidated damages. *Id.*

18. Letter containing offer to pay specified sum for certain services, and acceptance of such offer evidenced by performance of service, constitute contract in writing which evidence of antecedent or contemporaneous verbal agreement is inadmissible to vary or control. (Whether parol testimony is inadmissible to show that such letter was not intended as an agreement for another purpose, not determined.) *Hooker* v. *Hyde*, 807.

19. Stipulation in, made by parties uninfluenced by misrepresentation or fraud and with full knowledge that one party shall be absolutely released in

CONTRACT.

case statement made by the other shall be found not to be in all respects true, is valid, and must be enforced, where it does not affirmatively appear that party making said statement, with reason, believed it to be true. *Peniston* v. *Ins. Co.*, 342.

20. Agreement made on valid consideration by one person with another, to pay money to a third, can be enforced by latter in his own name; that agreement is under seal and such third person is not named therein, do not affect right to enforce it. *Emmitt* v. *Brophy*, 343.

21. By written agreement made in presence of C., D. agreed with P., for valuable consideration, to pay $300 to C. out of certain moneys, before satisfying other claims, and at same time accepted an order on him by P. in favor of C. for $300 to be paid first out of said moneys. In action by C. against D. for the $300, *Held*, that evidence of parol contemporaneous agreement between P. and D., varying terms of the written contract as to payment of said $300, was inadmissible. *Cook* v. *Durham*, 677.

22. For speculation in stocks upon margins, when broker and customer do not contemplate or intend that stock purchased or sold shall become or be treated as stock of customer, but real transaction is mere dealing in difference between prices, is unlawful in N. J., and securities given therefor are void by force of the "act to prevent gaming." *Flagg* v. *Baldwin*, 480.

23. Such contracts, though made in another state, where they are to be presumed to be lawful and enforceable, will not be enforced in N. J.—at least against its residents and citizens—because their enforcement would violate plain public policy of state on gambling and betting, evinced by statute above mentioned. *Id.*

24. Where one agreed to build party-wall resting equally upon his own and land of neighbor, who agreed to pay half the cost on completion, and as land of neighbor did not extend as far north as wall, party erecting agreed to convey to him small strip lying north of where his line terminated: such contract was absolute and the covenants independent; therefore conveyance by party building was not condition precedent to enforcement of his claim for half cost of wall. *Ensign* v. *Sharp*, 343.

25. In case of concurrent conditions, to be simultaneously performed, if one party is ready and willing, and offers to perform, and other will not, first is discharged from performance and may maintain action against other. *Id.*

26. Creation of fund with which to pay indebtedness of educational institution not sufficient consideration for promise to contribute certain amount to that object. *Johnson* v. *Trustees*, 341.

27. Therefore, where party gave to educational institution his note for $100, payable three years after date, and stipulating therein that the money was to be used exclusively to liquidate its then existing indebtedness. *Held*, that same was without consideration. *Id.*

28. Authority in charter providing that trustees "may procure funds for the endowment of professorships, the erection of buildings * * * the purchase of lands * * * and for whatever may be necessary for the prosperity of the institution, and shall faithfully apply what they shall receive by donation or otherwise to these purposes; provided that all donations, bequests, &c., shall be applied in accordance with the designs expressed by the donors," does not convert above note and its acceptance into case of mutual promises, nor otherwise make it valid. *Id.*

29. CONTRACTS FOR THE BENEFIT OF THIRD PERSONS, 1.

COPYRIGHT.

1. Lecturer from unpublished manuscript to limited audience may enjoin subsequent publication of such lecture by one who has taken it down in shorthand and attempts to publish it for his own profit. *Nicholls* v. *Pitman*, 435, *and note.*

2. Under clause of U. S. Constitution empowering Congress to secure to "authors and inventors the exclusive right to their respective writings and discoveries," copyrighting of photographs, so far as they are representatives of original intellectual conceptions of author, can properly be authorized; and

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they are such when artist has posed his subject and arranged the draperies, &c., so as to produce distinct effect. *Lithographic Co.* v. *Sarony*, 343.

CORPORATION. See ATTACHMENT, 3; CONSTITUTIONAL LAW, 6, 23, 24; CONTRACT, 16; PARTNERSHIP, 7; REMOVAL OF CAUSES, 3; WILL, 12, 13.

1. Owner of all the capital stock not legal owner of its property, cannot maintain replevin therefor in his own name. *Button* v. *Hoffman*, 678.

2. Publication by savings bank directors, that "directors and stockholders are personally responsible for its debts," does not constitute contract with depositors; but if statement is false there may be action for deceit. *Westervelt* v. *Demarest*, 616.

3. Except as to matters affecting the civil rights of individuals or property of the corporation, when courts of law will interpose, the governing bodies of the religious society have exclusive jurisdiction with respect to a church's affairs. *State* v. *Rector*, 208.

4. Shareholder entitled to mandamus to compel officers holding corporate documents to allow him an inspection and copies of them at reasonable times for specific and proper purpose, upon showing refusal to allow such inspection. *Commonwealth* v. *Iron Co.*, 388, *and note.*

5. Payment of shares in may be made otherwise than in money, as by publication in newspaper of articles, &c., favoring the enterprise (building bridge over Mississippi), and pointing out its need and value as an investment; such contract not contrary to public policy. *Liebke* v. *Knapp*, 678.

6. Stockholder cannot set off indebtedness of corporation in action to enforce his individual liability. *Thebus* v. *Smiley*, 746.

7. Such action is in nature of equitable attachment, and thereby creditor acquires preference, which neither other creditors nor stockholders can defeat, unless possibly by bill for general closing up of affairs of corporation. *Id.*

8. Pledgee of stock receiving power of attorney to transfer same on books of company, but who never had same so transferred nor votes upon it, nor exercises acts of ownership thereof, is not liable to creditors in action to enforce individual liability of stockholders. *Henke* v. *Manufacturing Co.*, 68.

9. Liability of stockholders to creditors "to an amount equal to the amount of stock held by them respectively, * * * until the whole amount of the capital stock * * * shall have been paid in," &c., is not in nature of penalty, but based on contract between stockholders and creditors, and can be enforced outside of limits of state by which law was passed. *Flash* v. *Conn*, 145.

10. In such case as above, decision of state court is entitled to great, if not conclusive weight with federal courts. *Id.*

11. Under statutory provision making stockholders responsible for debts of corporation to an amount equal to stock held by them, they are in effect made partners, and are jointly and severally liable to amount stated: one stockholder cannot, therefore, sue another on such individual liability. *Thompson* v, *Meisser*, 270.

12. When a stockholder is thus sued he cannot set off a debt due from corporation to himself. *Id.*

13. In determining whether act is *ultra vires*, regard is to be had to its effect and real object. *Bank* v. *Flour Co.*, 746.

14. Accordingly: Although trading corporation may not with its own means pay or secure private debt of president to third person, yet where he is its creditor, it may pay or secure such private debt, when real object and effect is to pay or secure indebtedness of company to him in same amount. *Id.*

15. In action by creditor to enforce personal liability of stockholders, where all were not before the court, and it did not appear that those not served could not have been served, it was error to assess upon the stockholders served the whole amount of corporation's indebtedness. *Bonewitz* v. *Bank*, 410.

16. In such action it was error to give judgment for some of stockholders, upon finding that they did not own stock at time liability sought to be enforced accrued. *Id.*

17. Corporation of one state doing business in another under law of latter compelling it to always have there resident attorney upon whom process against

CORPORATION.

company may be served, may be sued in latter state on any simple contract just as if that were the only state in which suit could be brought. And if letters of administration must be taken out for purpose of suit, liability of corporation to be sued in latter state makes such simple contract debt assets there for purpose of founding administration. *Ins. Co* v. *Woodworth*, 410.

18. But in such case foreign corporation does not lose its right of removal into United States court. *Id.*

19. Constitution of Colorado required foreign corporation doing business in the state to have an authorized agent or agents in the same, "upon whom process may be served," and state statutes required certificate to be filed designating such "an authorized agent or agents," residing at its principal place of business in the state. *Held*, that certificate stating that the "general manager, residing," &c., without naming him, was such agent, was sufficient. *Goodwin* v. *Mortgage Co.*, 343.

20. Stock issued beyond charter limit is void. *Clark* v. *Turner*, 344.

21. If one who subscribed to stock of insurance company, after charter limit was reached, induced insurance on part of any other person, in that company, by his acts as trustee or agent thereof, or on faith of his subscription, individual action on part of person so induced would lie against him, but not an action by company or its assignee for his subscription. *Id.*

CORPSE. See CRIMINAL LAW, 2, 3.

COSTS. See MUNICIPAL CORPORATION, 43.

Party succeeding in substantial particular, on exceptions to master's report, is, as general rule, entitled to costs in such proceedings. *Sanford* v. *Clarke*, 480.

COUNTY. See MUNICIPAL CORPORATION.

COURTS. See CONSTITUTIONAL LAW, 25; CRIMINAL LAW, 22; EVIDENCE, 5, 6; INFANT, 3.

1. Certificates of inferior courts as to what has transpired in their presence, cannot be contradicted by affidavits. *State* v. *Camp*, 145.

2. Mandamus does not lie to compel court to do what it has discretion to refuse to do. *Id.*

3. For purpose of construing statute or constitution, may take judicial notice of everything which may affect validity or meaning thereof. *City* v. *Gillett*, 778.

4. While court takes judicial notice of such things as division of state into counties, and of latter into townships, according to government surveys, it cannot take notice of fact that land located under scrip is in lake which is navigable body of water, and hence not subject to location. *Wilcox* v. *Jackson*, 411.

COVENANT.

1. If *non est factum* is not pleaded, plaintiff need offer no proof of execution. *Wharton* v. *Stoutenburgh*, 746.

2. Where mining lease stipulated for raising annually specified quantity of ore or to pay stipulated rent. *Held*, that non-existence of quantity of ore was no defence. *Id.*

3. Vendees of lots of building estate covenanted with vendors and each other not to build shops or use their houses as shops, or carry on any trade therein. Purchaser of one lot, who occupied his house as private residence, brought action against another purchaser, who was using his house as beer shop with an "off" license. Defendant had, to knowledge of plaintiff, so used his house for three years before action was commenced. Several other houses built on others of lots (one immediately opposite plaintiff's house) had been for some time used as shops, and many of houses adjoining plaintiff's were occupied by two families each at weekly rents. *Held*, inequitable to enforce specific performance of the covenant. *Sayers* v. *Collyer*, 68.

CRIMINAL LAW. See ATTACHMENT, 1; ATTORNEY, 1; BAIL; CONSTITUTIONAL LAW, 26; EQUITY, 1; EVIDENCE, 22, 23; JURY, 2; REMOVAL OF CAUSES, 6.

CRIMINAL LAW.

I. *Generally.*

1. Constitutional right to meet witnesses face to face may be waived. *Williams* v. *State*, 801.

2. Not misdemeanor to burn dead body unless so done as to amount to public nuisance. *Queen* v. *Price*, 560, *and note.*

3. If inquest ought to be held upon dead body, it is misdemeanor so to dispose of it as to prevent coroner from holding inquest. *Id.*

4. Better rule is, that respondent has no ground of complaint when he challenges juror for cause and is refused, and then challenges peremptorily, if he has challenges left when panel is filled. *State* v. *Gaffney et al.*, 746.

5. By pleading not guilty to indictment and going to trial without making objection to mode of selecting grand jury, the objection is waived; at least, except where objection goes to subversion of all proceedings in empanelling and swearing grand jury. *United States* v. *Gale*, 209.

6. Where licensed person is charged, under section 13 of English Licensing Act of 1872, with having sold intoxicating liquor to drunken person, it is no defence to show that neither accused nor his servants knew, or had means of knowing that person served was drunk. *Cundy* v. *Le Cocq*, 768, *and note.*

7. In absence of notice, neither defendant nor his counsel bound to attend court on Sunday on coming in of jury; and where court, in their absence, received verdict on that day and discharged jury, and refused to poll jury next day, *held*, there must be reversal of judgment and new trial. *State* v. *Muir*, 747.

8. Challenge to array ought not to be sustained on account of mere irregularities or informalities; yet where statute specifically prescribes class or list of persons from whom jurors are to be selected, failure to draw jurors from prescribed class or list, is sufficient ground of such challenge. *State* v. *Jenkins*, 746.

9. If judgment of conviction has been pronounced by justice of peace, upon valid complaint, charging offence of which he had jurisdiction, a regular appeal by defendant from such judgment confers jurisdiction upon appellate court, even though justice may have committed errors which divested his jurisdiction. *State* v. *Boucher*, 411.

10. Where person has sufficient mental capacity to understand nature and quality of particular act or acts constituting the crime, and to know whether they are right or wrong, he is generally responsible. *State* v. *Nixon*, 545.

11. In criminal prosecutions, where jury entertain reasonable doubt as to insanity, they should acquit. *Id.*

12. There is a class of offences that may be committed by party in one county upon person or thing in another county, when offence may not inaptly be defined as having been committed in either county; and offences committed on county line or within inappreciable distance therefrom, may with propriety be regarded as having been committed in either county, and by doing so no one is deprived of any constitutional right. *Buckrice* v. *People*, 616.

13. Great caution is necessary in admission and use of dying declarations. Admissibility and competency of the evidence is for judge to decide, and he should instruct jury afterwards to pass finally on question, whether or not declarations were conscious utterances in immediate prospect of death. *Mitchell* v. *State*, 145.

14. Burden of proving insanity is on the accused. *Graves* v. *State*, 146.

15. Judgment of conviction will be reversed on refusal to grant new trial on ground of newly-discovered evidence which is relevant and important. *State* v. *Curtis*, 146.

16. Plea of once in jeopardy not sustained by proof of former trial of same indictment, with verdict of guilty set aside on motion of defendant for misconduct of juror. *State* v. *Blaisdell*, 270.

17. Attorney's consent to try client for misdemeanor in client's absence will be *prima facie* presumed to be by authority of client. *Martin* v. *State*, 270.

18. Court should not permit defendant to be tried in his absence where punishment may be imprisonment: but having done so with defendant's consent he cannot complain. *Id.*

19. Temporary insanity produced immediately by intoxication, furnishes no

CRIMINAL LAW.
excuse for the commission of homicide or other crime, but fixed insanity does: which kind of insanity accused was under, question of fact for jury. *Upstone* v. *People*, 411.

20. Voluntary drunkenness not available to disprove intent, so as to reduce crime from murder to manslaughter. *Id.*

21. On trial for crime, opinions of neighbors and acquaintances, not experts, may be given as to defendant's sanity or insanity, founded on their actual observations. *Id.*

22. Under constitutional provision conferring upon Supreme Court power to issue writs of *habeas corpus*, judge of that court has no power to issue such writ during vacation, nor can legislature confer such power. *In re Garvey*, 733.

23. *Habeas corpus* proper remedy where court below has denied prisoner's motion to be released, under statute providing that he shall be set at liberty unless tried on or before second term of court. *Id.*

24. A. was convicted of murder and sentenced. On appeal judgment was reversed. Court below, without new trial, sentenced A. for manslaughter. This judgment was reversed. Meanwhile more than two terms of court below had elapsed after reversal of original judgment. *Held*, that prisoner should be discharged under above statute. *Id.*

25. Credibility of defendant testifying on his own behalf tested in same manner as in case of any other witness: jury can consider his interest, as well as his demeanor and conduct upon witness stand and during trial; also his contradiction by other witnesses; and if, after considering all the evidence, jury find accused to have wilfully testified falsely to any material fact, they can entirely disregard his testimony, except where corroborated by other credible evidence. *Rider* v. *People*, 616.

26. In Illinois jury may convict upon uncorroborated evidence of accomplice. *Id.*

27. DRUNKENNESS AS AN EXCUSE FOR CRIME.

II. *Bastardy.*

28. Bastardy proceeding is *quasi*-criminal, and defendant must be proved beyond reasonable doubt to be father of child before he can be compelled to contribute to its support. *Van Tassel* v. *State*, 411.

III. *Indecent Exposure.*

29. Not necessary that indecent exposure should have been seen, if made in public place with intent that it should be seen and persons were there who could have seen it if they had looked. *Van Houpen* v. *State*, 616.

IV. *Homicide.*

30. Party present and encouraging unlawful act resulting in homicide, equally guilty of manslaughter with him who struck fatal blow. *Ritzman* v. *People*, 746.

31. Where one is assaulted in his home, or the home itself is attacked, a homicide will not be justifiable unless the slayer, in the careful and proper use of his faculties, *bona fide believes*, and has reasonable ground to believe, that the killing is necessary to repel the assailant or prevent his forcible entry, &c. *State* v. *Peacock*, 69.

V. *Larceny.*

32. Attempt to steal accompanied by such overt acts as will naturally result in its commission, constitutes attempt to commit larceny. Mere preliminary preparations not the overt acts required. *Sipple* v. *State*, 747.

CUSTOM. See INSURANCE, 13.

DAMAGES. See COMMON CARRIER, 14; CONSTITUTIONAL LAW, 31, 32; CONTRACT, 17; EASEMENT, 2; INJUNCTION, 5; INSURANCE, 14; NEGLIGENCE, 28; PARENT AND CHILD, 1; PLEADING, 3; SHERIFF, 4.

1. Damages for delay resulting from particular character of business of traveller, unknown to railroad company contracting with him, are too remote. *Railroad* v. *Hayden*, 150.

2. Passenger unlawfully ejected from ferry boat entitled to reasonable compensation for indignity and consequent injury to feelings. *Allen* v. *Ferry Co.*, 748.

DAMAGES.

3. Whether interest, *eo nomine*, is allowable in ascertaining damages in actions of tort or not, lapse of time from commission of wrong may be considered. *Clement* v. *Spear*, 747.

4. Measure of, in case against sheriff for escape, is plaintiff's actual damage, of which amount of judgment in action wherein escape took place is only *prima facie* evidence, open to rebuttal by sheriff. *Sheldon* v. *Upham*, 678.

5. Punitive, only allowed because of malicious motive supposed, from circumstances, to have prompted the wrong. If cause of offence be discontinued with reasonable promptness, exemplary damages should not be awarded. *Oursler* v. *Railroad Co.*, 69.

6. On failure to complete work on books and deliver same within time agreed upon, not admissible to prove that there may have been demand for books had they been ready. That sales had been made and profits lost in consequence of delay, would be competent evidence. *Hill* v. *Parsons*, 617.

7. True test as to damages for land taken for public use, is its market value for any purpose to which it is adapted or may be applied. If land is in use for market gardening and is most valuable for that purpose, owner may show this, and also value of manure on land. *Railroad Co* v. *Jacobs*, 801.

8. Exemplary, may be allowed, where agent, by false and fraudulent representations to principal, obtains possession of principal's goods and converts them to his own use; in such case jury may include plaintiff's reasonable counsel fees. *Iron Co.* v. *Harper*, 411.

9. Female plaintiff testified that shortly after injury complained of, cancer was developed at place on her person where she was injured, and medical testimony was offered on both sides of question whether cancer resulted from injury. *Held*, that that question was for jury: that if they found for plaintiff on that question, existence of cancer would be element of damage; and that plaintiff may have had tendency or predisposition to cancer, could afford no proper ground of objection to her claim. *Railway Co.* v. *Kemft*, 412.

DEATH. See PRESUMPTION, 2.

DEBTOR AND CREDITOR. See ASSIGNMENT, 2; CONFLICT OF LAWS, 2, 3; EQUITY, 4, 9, 18, 19.

1. Transfer of corporate stock with intent to hinder, delay and defraud creditors void as against them at common law. *Beckwith* v. *Burrough*, 617.

2. After such transfer stock was attached and sold as property of debtor. Purchaser filed bill to obtain stock. *Held*, that attachment and sale were good and bill could be maintained. *Id.*

3. Motive or purpose of voluntary transfer by party indebted, not material: such conveyance of itself *prima facie* evidence of fraud. *Goodman* v. *Wireland*, 546.

4. Presumption of fraud may be repelled by proving that grantor, at time of gift, was possessed of other means amply sufficient to pay his debts; *onus* is upon those seeking to uphold the gift. *Id.*

5. It is a *hindrance* to creditors for debtor to dispose of his real property and tangible chattels and compel them to rely upon merely personal obligations. *Id.*

6. If debtor and vendee respectively buy and sell goods in order to defraud debtor's creditors, sale is void as to creditors without regard to price or change of possession. *Stone* v. *Spencer*, 146.

7. Where right of attaching creditor is contested by transferree of debtor, on ground that goods were exempt from attachment in debtor's hands, the burden of proving such exemption is on transferree. *Id.*

DECEDENTS' ESTATES. See DOWER. EXECUTORS AND ADMINISTRATORS.

1. Where testator directs his executors to sell certain property and divide proceeds among certain named legatees, they can elect to take the property. *Swann* v. *Garrett*, 146.

2. Court of equity has power to elect for infant legatee. Interest of all legatees is to be consulted as well as that of infant. *Id.*

DECEIT. See CORPORATION, 2. FRAUD, 1.

DEED. See CONTRACT, 16; EASEMENT, 3; EJECTMENT, 5; MINES AND MINING, 9; MORTGAGE, 14; NOTICE, 1, 2; WILL, 1.

1. To make deed executed in blank operate as conveyance, blank must be filled by party authorized before or at time of delivery to grantee. *Allen* v. *Withrow*, 270.

2. Statutory requirement of two witnesses not answered by one attesting witness and daughter of grantor also being in and out of room when deed was executed; but not for purpose of being a witness. *Kenyon* v. *Segar*, 678.

3. "Subject to mortgage" in conveyance of one of two parcels of land mortgaged together, *held*, not to imply that incumbrance was to be satisfied wholly out of parcel conveyed or that grantee assumed any personal responsibility. *Hall* v. *Morgan*, 679.

4. Record is of itself presumptive evidence of delivery. *Ross* v. *Campbell*, 801.

5. Attestation by magistrate raises like presumption. *Id.*

6. Where grantor gave in the lot conveyed for taxation as property of grantee for several years succeeding execution of deed, this was strong manifestation of his understanding that deed was delivered and title conveyed. It may be that grantor would be estopped from denying his grantee's title, especially as he stated in conversation that he held property as agent of grantee. *Id.*

7. All these circumstances united, in absence of explanation, would show delivery of deed, although it was in possession of grantor when he died some years after its date. *Id.*

8. Where C. in good faith purchases land from S., and afterwards S. delivers to C. deed for same completely executed by V., the owner, and C. in good faith, and without notice, accepts the deed, and S. is not the agent of either C. or V., but acts for himself, and no question is at any time raised with regard to validity of deed as conveyance of land; and V. delivers possession to C. without questioning C.'s title, but afterwards claims the growing crops by virtue of parol agreement with S. *Held*, that deed conveyed crops as well as land, although V., when executing deed, believed same was to S., and although deed was in fact executed to blank grantee, and S. afterward inserted C.'s name, and although there may have been parol agreement between V. and S. that growing crops should continue property of V. *Chapman* v. *Veach*, 546.

DELIVERY. See DEED, 4–6; GIFT, 1, 3; PARTNERSHIP, 4; SALE, 2.

DEMAND. See LIMITATIONS, STATUTE OF, 9.

DEMURRER. See EQUITY, 14, 15.

DEVISE. See WILL.

DIVORCE. See HUSBAND AND WIFE, I.

DOWER.

Widow is deemed purchaser of devise or bequest in lieu of dower, and upon deficiency of assets to pay both debts and legacies, legacy to her is only liable after other assets have been exhausted, even though her legacy exceed value of her dower. This is the rule though bequest be of one-third "according to law." *Warren* v. *Norris*, 270.

DRUNKENNESS. See CRIMINAL LAW, 27.

DURESS.

1. Mortgage executed by married woman under duress of husband's imprisonment, is, as between her and mortgagee, void. *Bank* v. *Bryan*, 201, *and note.*

2. *Bona fide* holder of negotiable mortgage note, taken for value before maturity, may recover upon it, although both note and mortgage were obtained by duress; but he is not entitled to foreclose mortgage where property is wife's homestead mortgaged to secure husband's note. *Id.*

3. Where answer does not formally allege duress, but sets up facts sufficient

DURESS.
to constitute it, defence will be received, evidence of duress being admitted without objection. *Bank* v. *Bryan*, 20.

EASEMENT. See EQUITY, 8; PARTY WALL; WATERS AND WATER-COURSES.
1. One whose foundation walls are injured by water percolating through soil from adjoining lot has cause of action against owner thereof if water was unlawfully or unreasonably allowed to remain standing thereon, and not otherwise. *Quinn* v. *Railroad Co.*, 513, *and note.*
2. Damages to owner or occupant of land by reason of diminution of value thereof caused by neighboring nuisance must be confined to time during which nuisance existed. *Id.*
3. H., in 1848, owned both plaintiff's and defendant's premises. Deed conveying plaintiff's contained this clause: "Said sixteen feet (east) of said house to be kept open as far back as the south end of said house." Defendant claimed right of way. *Held*, that same was not reserved, but that clause is applicable to other matters, such as obstructing light, air or the view. *Wilder* v. *Wheeldon*, 617.
4. Right to uninterrupted flow of water, by means of pipes running through land of another, carries with it right to enter upon that land for purpose of cleansing and repairing, &c., such pipes. Injunction will issue to restrain servient owner from commission of any act which causes greater difficulty or expense in exercise of such rights, or which, if suffered, might materially affect them. *Goodhart* v. *Hyett*, 240, *and note.*
5. Defendants, 30 years ago, changed course of natural stream that ran through defendants' land and drained complainants' lands, and substituted therefore a sewer, presumably by consent of owner of complainants' lands. They have obstructed sewer and recently built embankment near complainants' line so as to back the water on complainants' said lands. *Held*, that court would compel them to remove embankment, and either restore natural stream to original course or to remove obstructions from sewer and rebuild it, although there is an allegation that if either be done water will be discharged on lands of other persons, and also that defendants are pecuniarily unable to do either. *Oliver* v. *Cemetery Co.*, 546.

EJECTMENT. See PARTITION.
1. Until tax deed is recorded, grantee therein cannot maintain. *Hewitt* v. *Week*, 412.
2. Where source of title is identical, and parties have no other title to rely on, neither party can go behind person from whom they hold, or show that his claim is not good. *Stafford* v. *Watson*, 344.
3. Where complaint in ejectment alleges that defendant claims title by mesne conveyance from plaintiff's grantor, and answer admits that defendant has no source of title beyond common grantor, it will be presumed, in absence of allegation and proof to contrary, that defendant's title is junior and subordinate to plaintiff's. *Id.*
4. Color of title is that which in appearance is a title, but in reality is not. It must be so far *prima facie* good in appearance as to be consistent with idea of good faith. *Bolden* v. *Sherman*, 802.
5. Deed purporting to convey two lots of land in a sub-division by their numbers, where plat and stakes showed precise location of lots sold, was held color of title to entire lots as shown by plats and stakes, notwithstanding one of lots as shown by other testimony, extended six feet over and upon adjoining tract, and description in deed showing distances did include the six feet. Monuments always prevail over distances. *Id.*

ELECTION. See DECENDENTS' ESTATES; PLEADING, 3; WILL, 17, 18.
1. Where question is for what or whom ballot should be counted, intention of voter should, if possible, be ascertained and control. *McKinnon* v. *People*, 748.
2. Where there is mistake or imperfection in ballots cast (Joseph M. on ballots, Henry M. nominee), extraneous evidence is admissible in contest to show intention. *Id.*

ELECTION.

3. Where patent ambiguity is raised in respect to name of candidate upon ballot, voter may if he so elects, testify what was intended. *McKinnon* v. *People*, 748.

EMINENT DOMAIN. See CONSTITUTIONAL LAW, III.; DAMAGES, 7.

ENCUMBRANCE. See MORTGAGE.

EQUITY. See CONSTITUTIONAL LAW, 17; COSTS; DEBTOR AND CREDITOR, 2; HUSBAND AND WIFE, 11, 13, 18; LEGACY, 2; MORTGAGE, 6, 7, 13; MUNICIPAL CORPORATION, 25; PARTNERSHIP, 1; SPECIFIC PERFORMANCE, 5; TRADEMARK, 1; TRUST AND TRUSTEE, 6.

1. Takes no part in administration of criminal law. *Pope* v. *Mayor*, 679.

2. Will not protect by injunction claim to trademark or label where either contains misrepresentation. *Siegart* v. *Abbott*, 481.

3. Decree in, must be on facts embraced within pleadings, beyond which prayer for general relief will not authorize court to go. If necessary pleadings should be amended. *Newham* v. *Kerton*, 679.

4. Requirement that debtor shall reduce his demand to judgment before he can maintain bill to set aside debtor's conveyance as fraudulent, means judgment in state where bill is filed. *Crim* v. *Walker*, 679.

5. Reversal of decree for error will not affect title of purchaser of real estate before appeal in good faith, who pays part of consideration money and secures balance by mortgage on premises, if court rendering decree had jurisdiction of subject matter and parties. *Hannas* v. *Hannas*, 617.

6. Bill having been filed in state court to remove cloud upon title to real estate, one defendant was served by publication in accordance with state statute and decree rendered against him. *Held*, that such decree could not be supported. Though courts of state might feel bound to give effect to the service, the judgment would be allowed no force in another state, or against citizen of another state in United States Court held within state in which judgment was rendered. *Hart* v. *Sansom*, 271.

7. A license agreed to be exclusive was not so written. On notice the grantor at once offered to grant such exclusive license for the original consideration. Grantee refused to accept a new agreement. Grantor sued for royalties, and grantee filed bill in equity claiming mistake in agreement and praying to have it cancelled. *Held*, that grantor was not in default and relief would not be granted. *Laver* v. *Dennett*, 210.

8. Some of windows of plaintiff's house overlooked piece of land belonging to railway company and used as goods-yard of station. When the house had been built sixteen years, the company put up screen opposite plaintiff's window to prevent his acquiring an easement of light and air. *Held*, that plaintiff was not entitled to injunction. *Bonner* v. *Railway Company*, 69.

9. In order to sustain creditor's bill, there must be judgment at law and return of *nulla bona* to execution thereon, unless claim has some equitable element, such as a trust or the like. *Dormueil* v. *Ward*, 271.

10. After failure of defendant to satisfy decree, and when attachment has been ineffectual, Court of Chancery has power to sequester *chose* in action belonging to defendant. *Hayes* v. *Hayes*, 271.

11. Practice in such cases should be analogous to proceedings under attachment law. *Id.*

12. Will not enjoin judgment at law merely on ground that process in the judgment suit was not served on defendant: it must further be shown that if relief be granted, a different result will be obtained from that adjudged by the void judgment. *Colson* v. *Leitch*, 802.

13. Where courts of equity and of law have concurrent jurisdiction, and former assumes it first, suitor will not be forced into court of law, unless at beginning of equity suit a court of law could have given as adequate and complete relief as court of equity could do. *Illegas* v. *Dexter*, 802.

14. Will vacate forged paper or direct its surrender for destruction. Demurrer, therefore, denying right to injunction restraining defendant from selling, &c., certain single bill, purporting to be single bill of complainant, and alleged by him to be forgery, is too broad. *Dennison* v. *Yost*, 412.

EQUITY.

15. Where bill calls upon defendant to answer charges imputing to him punishable offences, he may assert his privilege not to answer anything that may criminate him, by demurrer. *Dennison* v. *Yost*, 412.

16. Where bill was filed in Georgia alleging purchase of land therein, payment of purchase-money, refusal by vendor to make title, and that vendor was non-resident of state, and seeking to enforce the purchase and quiet title and possession, rule that defendant in equity in that state must be sued in county of his residence, is inapplicable; the question of jurisdiction is whether any court in the state has jurisdiction. *Harris* v. *Palmore*, 802.

17. In such a case Georgia court of equity has jurisdiction to settle the title and quiet the possession. *Id.*

18. Judgment creditor in absence of fraud, trust or other ground for equitable relief, and when no statute gives equitable jurisdiction, cannot by proceedings in equity subject *chose* in action of debtor to payment of judgment. *Greene* v. *Keene*, 481.

19. Hence when judgment debtor owned letters patent and arranged with third parties to do business under these letters and to pay profits to his wife, there being no fraud on part of third parties, and payments to wife being revocable at debtor's pleasure. *Held*, that bill filed by judgment creditor for account of profits and application of them to judgment debt, there being no statute authorizing intervention of equity, could not be sustained. *Id.*

20. Written agreement for advance by A. of $3000 to B. for purchase of land to be improved by subdivision and building, title being taken by B., stipulated for payment in addition to legal interest, of two-thirds of profits, the money so advanced being at no substantial risk and parties by their acts treating it as a loan. *Held*, to be in fact an agreement for a loan, and not a partnership, and usurious. *Plunkett* v. *Dillon*, 271.

21. Such an agreement *held also*, to be hard and unconscionable, and, as such, while it remains executory, not to be enforced in equity. *Id.*

22. On eve of sale under foreclosure proceedings on joint mortgage where decree provided for *pro rata* application of proceeds to demands of H. and F., H. expecting F. to become purchaser, and intending to defraud him, moved house on premises and covered by mortgage, to land of his own. F., in ignorance of this, bought at sale, price bid being but small part of aggregate amount of mortgage debts. H. was insolvent. *Held*, that because of H.'s insolvency, F. might proceed in equity to recover value of house with interest, and to subject H.'s land and house to payment thereof; and this whether maker of mortgage notes was insolvent or not. *Fox* v. *Hubbard*, 679.

ERRORS AND APPEALS. See CERTIORARI; CRIMINAL LAW, 9; EQUITY, 5; EVIDENCE, 17; PROHIBITION.

1. Appeal will not lie from order requiring defendant to answer by certain day. *Dennison* v. *Wantz*, 412.

2. Order awarding peremptory writ of mandamus is a final judgment allowing of writ of error to U. S. Supreme Court. *Woodworth* v. *Blair*, 803.

3. Several judgment creditors whose claims aggregated over $5000, obtained levy of certain tax to satisfy their claims, and united in application for mandamus on collector to compel collection of the tax. *Held*, that jurisdictional limit must be measured by amount of tax, and not by any individual claim. *Id.*

4. Order requiring party refusing to appear before commissioner and answer certain interrogatories and pay costs already accrued and costs of motion, is appealable. *Cleveland* v. *Burnam*, 147.

5. Decree in favor of plaintiff for title and possession of land and improvements, and ordering reference to ascertain necessity and value of repairs put upon them by defendant, for which he claims compensation, is not final for purposes of appeal. *Fitzpatrick* v. *Phillips*, 339.

6. To make judgment of state court reviewable in U. S. Supreme Court on Federal question, it must unmistakably appear that court below either knew, or ought to have known, that such a question was involved in decision to be made: suggestion of Federal question on petition for rehearing, insufficient. *Susquehanna Co.* v. *W. Branch Co.*, 344.

ERRORS AND APPEALS.

7. Provision of sect. 1007, Rev. Stat. U. S., that where writ of error may be supersedeas execution shall not issue until expiration of ten days, does not apply to judgments in highest court of state, and a writ of error operates as supersedeas only from time of lodging writ in office of clerk where record to be re-examined remains. Informing judge about to fill vacancy caused by a removal by state supreme court, of allowance of writ and approval of supersedeas bond, will not prevent appointment being valid. *Foster* v. *State*, 803.

8. In action upon insurance policy exceptions showed that plaintiff conceded certain facts on former trial from which it was evident he had given false answers in the application, and on a retrial plaintiff offered to prove that answers, though false, were made without his knowledge by defendant's own agent, "written in afterwards," and that the admissions were oral, made by his attorneys on the former trial, and for that trial only. Court, treating exceptions as part of record, ordered verdict for defendant. *Held*, error, and that plaintiff's evidence should have been submitted. *Mullin* v. *Ins. Co*, 547.

ESTOPPEL. See DEED, 6; ERRORS AND APPEALS, 8; MUNICIPAL CORPORATION, 37.

EVIDENCE. See AGENT, 10; BILLS AND NOTES, 8, 17, 18, 23; CONSTITUTIONAL LAW, 21, 22; CONTRACT, 18, 21; CORPORATION, 4; COURTS, 3, 4; COVENANT, 1; CRIMINAL LAW, 13–15, 21, 25, 26; DAMAGES, 4, 6; DEBTOR AND CREDITOR, 7; DEED, 4–7; ELECTION, 2, 3; EXPERT; FRAUDS, STATUTE OF, 3; INSOLVENCY; INSURANCE, 4, 13; MUNICIPAL CORPORATION, 33; NEGLIGENCE, 24; PARENT AND CHILD, 3; SHERIFF, 1; SLANDER AND LIBEL, 2, 7; SURETY, 5; TELEGRAPH, 1; TROVER, 3; WILL, 10, 18.

1. Court will take judicial notice of incorporation of city under general act. *Potwin* v. *Johnson*, 210.

2. Witness cannot refresh his memory by copy, made some time afterward, of mem. made at time. *Lovell* v. *Wentworth*, 210.

3. Abstract of title but secondary evidence, and, therefore, its contents cannot be proven in case of loss or destruction. *Thatcher* v. *Olmstead*, 618.

4. Non-expert may give his estimate of rate of speed at which railroad train was moving, but such estimate should be received with great caution. *Hoppe* v. *Railroad*, 803.

5. Judicial notice is not taken of journal of legislature. *Burt* v. *Railroad Co.*, 534.

6. When enrolled bill is signed by presiding officer of each house, and approved by governor, if subject-matter is within constitutional power of legislature, it is *prima facie* valid; if it assumes to create court, court is *prima facie* legal. *Id. and note.*

7. Where principal negligence charged against defendant is failure to read instrument which he signed, practical test of his ability by handing him certain instruments to read before jury is proper. *Ort* v. *Fowler*, 570.

8. Question being whether certain services were rendered gratuitously, evidence that third person had been paid, or that it was customary to pay for similar services, is irrelevant. *Kelly* v. *Houghton*, 412.

9. Where party admits that services for which claim is made were rendered and were worth sum claimed, but alleges they were rendered gratuitously, burden of proof is upon him to show they were so rendered. *Id.*

10. Strangers to written instrument, when their rights are concerned, are at liberty to show by parol that the contract is different from what it purports to be. *Washburn Co.* v. *Chicago Co.*, 413.

11. If promissory note and accompanying mortgage, executed at same time, do not correspond as to interest, extrinsic evidence is admissible to show which paper expresses real intention and agreement of parties. *Payson* v. *Lawson*, 70.

12. Non expert witness may testify whether within given time person has failed mentally or physically, but only an expert (one having scientific training on subject, or physician) can be asked his opinion as to mental capacity of person at certain time. *Commonwealth* v. *Brayman*, 679.

13. Creditor having judgment against A. levied on stock in corporation claimed by B. under assignment from A., and summoned B. as garnishee. A.

EVIDENCE.
died. *Held*, that A.'s administrator and B. were competent witnesses on B.'s behalf in regard to transactions at time of assignment. *Bank* v. *Jacobs*, 211.

14. If party against whom incompetent witness is called, with full knowledge of incompetency, allows witness to be sworn and examined, without objection, he will be considered to have waived objection to his incompetency. *Morfort* v. *Rowland*, 547.

15. But, though party has lost his right to object, court may, on its own motion, if it appears that evidence is opposed to policy of law and dangerous to administration of justice, suppress it. *Id.*

16. Where brakeman was killed while attempting to couple cars, no one being present, in action for damages by his personal representatives, evidence of his prior habits as to care, prudence and sobriety, admissible; but not evidence as to usual mode of coupling and uncoupling cars at same place by others. *Railway Co.* v. *Clark*, 211.

17. Allowing witness to answer question only slightly leading, if at all, and which does not prejudice party objecting, not sufficient to warrant reversal. *State* v. *Jones*, 771.

18. Question calling for conclusion of fact relevant to case, such conclusion not being ultimate fact to be found by jury, not improper. *Id.*

19. Declarations to be admissible as *res gestæ* need not be precisely concurrent in point of time with principal transaction: sufficient if near enough to clearly appear to be so spontaneous and free from sinister motives, as to afford reliable explanation of principal transaction. *Id.*

20. Questions asked upon cross-examination not tending to modify or explain testimony in chief, but to elicit testimony which would have effect to discredit testimony which witness had given in chief, not admissible. *Id.*

21. Instructions must be based upon evidence and must not be misleading. *Id.*

22. When defence of insanity is interposed to indictment for murder, evidence as to conduct, language and appearance of defendant at other times than during time of alleged killing, is admissible. *Id.*

23. If evidence makes it merely probable to jury that defendant was insane at time of killing, he should be acquitted. *Id. and note.*

EXECUTION. See ERRORS AND APPEALS, 7; HOMESTEAD; MORTGAGE, 9.

1. Where one defendant is surety for others and creditor knows it, he cannot voluntarily release property of principal debtors which has been seized in execution and then resort to property of surety. *Hyde* v. *Rogers*, 147.

2. Defendant gave receipt of certain property to plaintiff, which he had attached as sheriff on writ in favor of attorney, who subsequently brought another suit on note owned by married woman, but in his own name for convenience only, giving writ to another officer, who without directions as to attachment or knowledge of attorney, attached receipted property which was afterwards sold to T., who sold it to company, in which attorney was interested, he being ignorant of sale. *Held*, that defendants were liable on receipt. *Rider* v. *Sheldon*, 748.

EXECUTORS AND ADMINISTRATORS. See CORPORATION, 17; EVIDENCE, 13; WILL, 12, 13.

1. Executor who deposits money to his credit, in official capacity, in bank of good standing, will not be liable for its loss by failure of bank. *Cox* v. *Boone*, 482.

2. Administration should be granted to person entitled at time of application, not at time of death. *Griffith* v. *Coleman*, 482.

3. Testator cannot affect commissions which law allows his executor; and where there has been full administration, even court has no power to deprive him of minimum amount. *Hardy* v. *Collins*, 70.

4. Where property is given to executors in trust, to be equally divided among testator's children, sons' shares to be paid in cash and those of daughters held in trust during their lives, executors have power to sell testator's lands. *Belcher* v. *Belcher*, 547.

5. Executors charged with sale of lands to pay debts, purchasing such lands

EXECUTORS AND ADMINISTRATORS.
at sheriff's sale under execution against testator, will, at instance of *cestuis que trust*, be decreed to hold same by continuing trust, or held to account for proceeds if same have been resold to *bona fide* purchasers. *Marshall* v. *Carson*, 481.
6. Where statute provides that no action shall be maintained against administrator on claim against intestate, without thirty days' previous demand; an action cannot be maintained without such notice for default in payment of interest on bond given by intestate but on which no default occurred in his lifetime. *Boothby* v. *Boothby*, 803.

EXEMPTION. See ASSIGNMENT, 3; ATTACHMENT, 2; DEBTOR AND CREDITOR, 7; HOMESTEAD; TAX AND TAXATION, 5, 6; UNITED STATES.

EXPERT. See EVIDENCE, 4, 12.
One who has for considerable time been engaged in business necessitating frequent comparison of handwritings is qualified, as an expert, to testify to genuineness of disputed signature by comparison with others admitted to be genuine. *Ort* v. *Fowler*, 570.

FENCE. See NEGLIGENCE, 13, 14; RAILROAD, 12.
License to build, upon division line, will not authorize worm or zigzag fence. *Morton* v. *Reynolds*, 211.

FERRY.
With respect to goods placed within his control for transportation, ferryman undertakes for safe carriage against all perils not arising from act of God or public enemy. Where goods are retained by passenger within his own control, duty of ferryman is to provide, and use with skill and care, such means and appliances as are adapted to security of passenger and his property; and contributory negligence on part of passenger will prevent recovery. *Dudley* v. *Ferry Co.*, 147.

FIRE ESCAPE. See NEGLIGENCE, 31.

FIXTURE.
1. Buildings erected on land occupied under contract to purchase become property of owner if purchase be not completed. *Tyler* v. *Fickett*, 70.
2. Tenant at will of lessee erected small building on land resting on stone posts sunk into the ground. Building was erected with consent of lessor, and with understanding between him and tenant at will that it could be removed as trade fixture. Both tenancies expired at same time, and neither tenant removed building; lessor resumed possession of land, and soon after former tenant at will hired it, with other land, at increased rent. *Held*, that tenant at will could not remove the building. *McIzer* v. *Estabrook*, 70.

FOREIGN CORPORATION. See CORPORATION, 17; SPECIFIC PERFORMANCE, 5.

FORMER RECOVERY.
Judgment against agent for fraud committed while acting within scope of his agency, on which no collection or payment has been made, no bar to action against principal. That principal was wholly ignorant of fraud is immaterial. *Maple* v. *Railroad*, 70.

FRAUD. See ACTION, 4; BILLS AND NOTES, 17; CONTRACT, 7; DEBTOR AND CREDITOR, 3–6; EQUITY, 22; SALE, 4; TAX AND TAXATION, 2.
1. The misrepresentations must be relied on, and must be known to be false at the time by party making them, to be ground of action on the case for fraud and deceit. *Holdon* v. *Ayer*, 804.
2. Defendant, a quarryman, gave order on his employers to pay his monthly wages to plaintiff, for his, defendant's monthly store bill, and to pay old debt. Notice was given to employers of order. They refused to accept it, but paid wages to plaintiff for several months, then notified him they would do so no longer, and paid directly to defendant. Employers alone were responsible for discontinuance of payments to plaintiff. *Held*, that the receiving of his wages by defendant, although then indebted to plaintiff, did not amount to a tort. The element of fraud was lacking. *McGuire* v. *Kiveland*, 547.

FRAUDS, STATUTE OF. See CONTRACT, 7.

1. Lease may be made to take effect in future and estate begins with future period, and not with contract. *Whiting* v. *Ohlert*, 384.

2. Agreement by parol for future term, not exceeding one year, is valid, and is not "an agreement not to be performed within a year," within the statute. *Id. Contra*, *White* v. *Holland*, 385, *and note.*

3. When written memorandum does not purport to be complete expression of entire contract, matter omitted may be supplied by parol. *Ellis* v. *Bray*, 680.

4. Promise by third person to assume and pay debt in consideration of discharge of original debtor, accompanied or followed by such absolute discharge, is founded on sufficient consideration and need not be in writing. *Wittemore* v. *Wentworth*, 804.

5. Verbal agreement to construct section of road within year and twenty days from date of contract was, made. Work *could* be completed within year, and the twenty days was a precaution against contingencies. *Held*, not "an agreement that is not to be performed within the space of one year from the making thereof." *Jones* v. *Pouch*, 413.

6. In pursuance of verbal agreement of owner of lot of ground, to convey same when building should be erected thereon, and dedicated to religious worship and society incorporated, subscription was raised, and money expended in erection of building. *Held*, that such expenditure was tantamount to payment of consideration, which, in connection with taking possession and making improvements, took case out of statute. *Whitsitt* v. *Trustees*, 618.

7. Surety on non-negotiable note conveyed his real and personal estate to defendant in consideration of grantor's future support and payment of his debts. Subsequently defendant made verbal promise to plaintiff, who became owner of note by inheritance, that he would pay it if principal did not. *Held*, that promise was not within statute, and that conveyance was sufficient consideration. *Bailey* v. *Bailey*, 748.

GARNISHMENT. See ATTACHMENT.

GIFT.

1. Delivery not necessary where donee is already in possession. *Providence Ins. for Savings* v. *Taft*, 680.

2. Gift of savings bank pass book is in effect gift of deposit. *Id.*

3. H. deposited sum of money in savings bank in name of E., "subject to the order of H." A few days afterwards H. asked E. to come to his house, showed him deposit-book, said he was going to give it to him, and delivered it temporarily into his possession. H. then said he would keep book in his safe and put it there. On same day, at E.'s request, H. signed and delivered to E. paper certifying that money was for him. H. allowed interest to accumulate on deposit during his life, doing nothing to assert personal ownership. E. gave seasonable notice to bank that he should claim money; but bank paid same to H.'s administrator. *Held*, in action against bank that jury could find complete gift to E.; and that bank had sufficient notice thereof. *Eastman* v. *Savings Bank*, 680.

4. B., plaintiff's executor, deposited $800 in defendant savings bank in name of C. but payable to himself. He took deposit book, which he kept and controlled. He withdrew little more than half, and in few months directed treasurer of bank to add to first entry, "Payable to L. Barlow," the words "during his life and after his death to Marion Cushing." B. made will before deposit in which was provision: "I hereby confirm all gifts I have made or shall make to any of my children." C. was grandchild. It did not appear that B. did or said anything else in relation to deposit, or that indicated intention to hold pass book in trust for C. Printed by-law in book provided that no deposit could be withdrawn without production of same. Bank had no communication with C., and understood that B. was depositor and so treated him. C. had no knowledge of transaction. *Held*, 1. There was no delivery, no acceptance, and therefore deposit could not be sustained as gift *inter vivos;* 2. Bank did not hold money as trustee for C.; 3. There was no trust relation between donor and claimnant. *Pope* v. *Savings Bank*, 618.

GUARDIAN AND WARD.

1. That ward comes of age pending suit by guardian on instrument payable to "A., guardian of B.," affords no ground to abate it. *Gard* v. *Neff*, 211.

2. Since Georgia "married woman's act" of 1866 she can be guardian. If woman, who was guardian of her children by first marriage, remarried and suffered her last husband to use, or, in conjunction with him, used land of such children, and consumed rents, whether her letters of guardianship abated upon her marriage or not, she is liable to them for such rents. *Hood* v. *Perry*, 680.

HABEAS CORPUS. See CRIMINAL LAW, 23.

HIGHWAY. See MUNICIPAL CORPORATION, 7, 24, 32; STREET.

1. Town may, by long acquiescence in use of side track as part of travelled highway, become bound to keep same in repair, although it has provided another sufficient track. *Cartwright* v. *Belmont*, 147.

2. To relieve itself from such liability it must place obstructions in side track, or in some other way notify travellers not to use it. *Id.*

3. Special act appointing three commissioners to locate road, required them, or majority of them, to meet at place named before time named, and, after being duly sworn before some justice of the peace faithfully to review, mark and locate road, to proceed with their duties. *Held*, that in order to show legal road, it was necessary to prove they took the oath before proceeding. *Crossett* v. *Owens*, 749.

4. In such case recital in commissioner's report that they were duly sworn, without stating they were sworn to perform duties imposed by act or to perform any duty whatever, is insufficient. *Id.*

HOMESTEAD. See DURESS, 2.

1. Tenant in common entitled to, exempt from execution, and on his death right descends to widow and heirs. *Ward* v. *Mayfield*, 345.

2. Land entered under United States homestead law, where party entering same dies within five years and before patent issues, will not pass under his will. *Chapman* v. *Price*, 749.

3. Where sold for purpose of removal of family to another state and making reinvestment there, reversionary interest is subject to levy and sale. *City* v. *Bryant*, 805.

4. In case of sale of Georgia homestead for reinvestment, intention of law is that such reinvestment shall be within the state; and while purchaser may be subrogated to rights of head of family, yet a sale and removal from the state terminates any immunity from levy, at least as to reversion. *Id.*

5. *Semble*, that upon removal of debtor from state his homestead terminated, and levy and sale of reversion would carry entire title. *Id.*

6. Under Illinois statute to create homestead three things must concur: 1st. Person must be householder. 2d. He or she must have a family. 3d. Property must be occupied as a residence. *Rock* v. *Haas*, 804.

7. Person owning dwelling house capable of being occupied as such is householder. *Id.*

8. Under the act a family is a collection of persons living together. *Id.*

9. To create homestead by reason of being husband and wife, relation must be legal and not pretended. Marriage by man and woman previously living together upon her premises after judgment against her becomes a lien upon same, is insufficient. *Id.*

10. *Bona fide* intention to acquire certain land for homestead, evidenced by overt acts in fitting it for such purpose and followed within reasonable time by occupancy, renders such land exempt from time of its purchase with such intent; and such exemption covers also the material actually upon the ground, and designed for use in construction of dwelling house, well or other essential of homestead. *Scofield* v. *Hopkins*, 804.

11. Where the judgment creditors are purchasers at execution sale of land, they are presumed to know what debtor has done and is doing on land, indicating intention to make it his homestead, and if such intention is manifest, no notice of claim of premises as homestead is necessary to prevent waiver of exemption. *Id.*

HUSBAND AND WIFE. See BILLS AND NOTES, 29, 30; DURESS, 1, 2; GUARDIAN AND WARD, 2; HOMESTEAD, 9; PARENT AND CHILD, 4, 5; WITNESS.

I. *Marriage and Divorce.*

1. At common law, persons of suitable age might, by words of present consent, contract a valid marriage without a minister or any particular form. *Mathewson* v. *Iron Foundry*, 401.

2. Statute of state may take away this right, but where it is merely directory and does not expressly forbid other marriages, a common-law marriage is valid and entitles wife to dower. *Id.*

3. Although early statutes abrogated common-law marriages, yet on their repeal and passage of statute directory merely, common law is revived. *Id.*

4. After valid common-law marriage, neither fact that previous relations of parties had been unlawful, nor after denial of marriage by either party would destroy effect of contract. *Id.*

5. Where claim or defence depends upon question whether person was of sound or unsound mind at time of marriage and afterwards, not necessary that there should have been decree of nullification or divorce in lifetime of such person. Question may be made and decided in proceeding to obtain year's support by widow. *Bell* v. *Bennett*, 681.

6. Husband believing wife dead married again, and subsequently discovered that wife was alive and had committed adultery. *Held*, that he was entitled to dissolution of his marriage. *Freegard* v. *Freegard*, 69.

7. Mere rudeness of language, petulance of manner, austerity of temper or even occasional sallies of passion, if they do not threaten bodily harm, do not constitute legal cruelty. *Gleason* v. *Gleason*, 640, *and note.*

8. Mass. court has jurisdiction of libel for divorce by non-resident husband, for adultery occurring in that state, where both parties then resided and wife has since remained. *Watkins* v. *Watkins*, 212.

II. *Separate Estate.*

9. Married woman having separate estate, who executes promissory note as surety for husband, will be presumed to intend thereby to charge her separate estate: such presumption can only be overcome by proof of facts surrounding execution and delivery of note showing that such was not her intention. *Hershiser* v. *Florence*, 315, *and note.*

10. Real estate purchased by married woman with her individual means, becoming her general property, was, by subsequent statute, changed into her separate estate, subject to vested rights. Such property was not thereby subjected to her debts previously made, and husband's freehold was not divested. *Id.*

11. If married woman lends money out of her separate estate to partnership of which husband is member, and on dissolution of which partners agree that partner other than husband shall take assets and pay liabilities and indemnify his partner against them, but no promise is made by other partner to pay debt to wife, no trust is impressed upon money so lent by her; and she cannot maintain bill in equity against the two partners for payment of same. *Fowle* v. *Torrey*, 212.

12. If allowable at all for married woman in Missouri to make parol gift of separate personal property to husband, since Married Woman's Property Act of 1874, at least most cogent proof should be exacted. *Rieper* v. *Wehrmann*, 681.

13. Married woman whose separate personal property had, without her consent, been delivered by her bailee to husband, and by him converted to his own use, brought action to subject to payment of this indebtedness stock of goods in hands of husband, and praying for appointment of receiver. Goods were not identical property converted, but were purchased in part with proceeds of that property. *Held*, that equitable principle which prevents following of trust fund after it has changed its form and become undistinguishable from rest of trustee's property, did not apply; and that married woman had no lien, but was entitled to share *pro rata* with other creditors, but that her equity was superior to bailee, also general creditor, and she was entitled to full satisfaction before he received anything. *Id.*

HUSBAND AND WIFE.

III. *Contracts, Conveyances, &c.*

14. Certificate of wife's separate acknowledgment must stand, as to facts stated therein, as against mere conflict of evidence. *Young* v. *Duval*, 148.

15. Rule that under gift by will to husband and wife and third person, husband and wife took only one moiety between them, does not apply in England to will that has come into operation since Married Women's Property Act of 1882. *In re March*, 70.

16. In action by husband and wife against railroad company to recover damage for personal injuries sustained by wife, it is error to include in claim for damages money expended to effect wife's cure, right of action for same being in husband alone. *Railway Co.* v. *Mills*, 548.

17. Married woman may, without her husband, execute any kind of power, whether simply collateral, appendant, or in gross; and whether given to her while sole or married. *Armstrong* v. *Kerns*, 548.

18. Husband may settle portion of his property upon his wife, if he does not thereby impair claims of existing creditors, and settlement is not intended as cover to future schemes of fraud. His direct conveyance to her, when clearly intended as such settlement, will be sustained in equity against creditors. *Moore* v. *Page*, 413.

19. POSSESSION BY HUSBAND AND WIFE, 625.

INCUMBRANCE. See MORTGAGE.

INDEPENDENT CONTRACTOR. See CONTRACT, 8, 9.

INFANT. See DECEDENTS' ESTATES, 2; LIMITATIONS, STATUTE OF, 6; NEGLIGENCE, 5; RAILROAD, 13.

1. Ratification of contract of, after full age, not affected by ignorance that he was not legally liable. *Anderson* v. *Loward*, 71.

2. Purchasing goods on credit and not returning them, liable for so much of price as is equal to benefit derived by him from purchase. Amount of benefit question of mixed law and fact. *Hall* v. *Butterfield*, 261. See also *Bartlett* v. *Bailey*, 272.

3. Making conveyance of real estate must disaffirm it within reasonable time after coming of age. Reasonableness of time, when there is nothing to excuse it, for the court. Three and a half years, unreasonable. *Goodnow* v. *Lumber Co.*, 329, *and note.*

4. ALLOWANCE FOR MAINTENANCE AND EDUCATION, 489.

INJUNCTION. See CONTRACT, 3; COPYRIGHT, 1; EASEMENT, 4; EQUITY, 2, 8, 12, 14; MORTGAGE, 13; MUNICIPAL CORPORATION, 4, 37; SPECIFIC PERFORMANCE, 5; TAX AND TAXATION, 2; TRADEMARK, 1.

1. Mandatory injunction will not be granted on preliminary application. *Hall* v. *Railroad Co.*, 126.

2. Difference between mandatory and prohibitory injunction. *Id.*

3. Collection of taxes under internal revenue laws, by officers claiming same to have been properly assessed, will not be enjoined. *Snyder* v. *Marks*, 71.

4. Interruption of business of city horse railway for three or four days by moving large house along street lengthwise with track, not ground for. *Railway Co.* v. *Anderson*, 212.

5. On dissolution of injunction granted on condition that bond of specified amount be filed, and bond was filed, with no other order as to payment of damages, defendant can recover no greater amount than penalty of bond. *Selectmen* v. *McGaffey*, 618.

6. *May* be granted to restrain oral slanderous statements concerning another's business, without showing actual loss. *Loog* v. *Bean*, 701, *and note.*

7. B. was employed to manage one of L.'s branch offices for sale of machines, and resided on premises. He was dismissed, and gave postmaster directions to forward to his private residence all letters addressed to him at L.'s branch office. He admitted that among letters so forwarded were two relating to L.'s business, and that he returned them to senders. After dismissal he went about among the customers making oral statements reflecting on L.'s sol-

INJUNCTION.
vency, and advised some not to pay L. for machines supplied through himself. L. brought action to restrain B. from making such statements, and from slandering L. or injuring his reputation or business, and from giving such notice to post office, and also asking that he be ordered to withdraw notice already given. *Held*, that injunction (mandatory as to withdrawal) ought to be granted, but that plaintiff should be put under undertaking only to open such letters at specified times with liberty to defendant to be present. *Loog* v. *Bean*, 701.

INNKEEPER. See ACTION, 6; SLEEPING CAR COMPANY,
1. Is by common law responsible for loss in his inn of goods of guest, except when loss arises from negligence of guest or act of God or of public enemy. *Olson* v. *Crossman*, 114, *and note.*
2. Guest is not to be charged with negligence merely because theft was committed by another guest whom he did not bring there, even though with his consent they are placed to sleep in same room. *Id.*
3. Notice to guest to deposit valuables with landlord; where not such as statute prescribes, is of no avail unless guest consents to it. *Id.*

INSANITY. See CRIMINAL LAW, 10, 11, 14, 19; EVIDENCE, 12, 22, 23; HUSBAND AND WIFE, 5; INSURANCE, 4; NEGLIGENCE, 24, 25.

INSOLVENCY. See CONFLICT OF LAWS, 3; EQUITY, 22; SALE, 2.
1. If facts are known to creditor which give him reasonable cause to believe debtor insolvent, and he also knows that debtor knows same facts, he has reasonable cause to believe that debtor believes himself to be insolvent, and that payment of debt by him is made in fraud of insolvency laws. *Cozzens* v. *Holt*, 681.
2. If debtor is insolvent before making payment of debt, and there is no evidence of subsequent change, jury will be warranted in finding him insolvent at time of payment. *Id.*

INSURANCE. See COMMON CARRIER, 2, 14.
I. *Generally.*
1. Person induced by false and fraudulent representations of agent to take policy and to pay premium thereon, may rescind contract and sue agent for amount of the premium. *Heddin* v. *Griffin*, 682.
2. RAILWAY INSURANCE, 553.

II. *Life and Accident.*
3. Deceased must have understood moral character of act he was about to commit to make self-killing death "by suicide" or "by his own hand." *Ins. Co.* v. *Broughton*, 71.
4. Opinion of person not an expert, in connection with statement of facts and circumstances within his personal knowledge upon which that opinion is based, admissible on question of insanity. *Ins. Co.* v. *Lathrop*, 482.
5. Plaintiff, while travelling by railway, fell asleep from weariness and motion of cars, and when it was quite dark, not knowing what he was doing, involuntarily walked to platform of car and fell. *Held*, that injuries were not "self-inflicted" or the result of "design" or "voluntary exposure to unnecessary danger" within conditions of accident policy. *Scheiderer* v. *Ins. Co.*, 148.
6. Person whose life was insured, on demand refused to pay second annual premium and died in about ten days after default. Two days after death, subordinate agent of the company, and friend of assured, being ignorant of his death, paid premium. On learning of death friend returned receipt and company the money. *Held*, that party to whom policy was payable acquired no rights. *Miller* v. *Ins. Co.*, 619.
7. By-laws of unincorporated mutual association provided that in case member had, for failure to pay assessment promptly, been dropped by secretary, board of directors should have power to reinstate him on his presenting reasonable excuse and paying arrears. Such a member the board refused to reinstate because they alleged his health was then precarious. He died very soon afterwards. *Held*, that court might, after death, determine adequacy of reason

INSURANCE.
offered, and in proper case, compel association to pay amount to which such delinquent's widow was entitled. *Van Houten* v. *Pine*, 549.

III. *Fire.*

8. Existence of prior insurance in same company at time of making contract of insurance, by agent of insured with agent of company, which was not known to either party, will not avoid the contract. *Iron Co.* v. *Ins. Co.*, 71.

9. If, at the time of making verbal application for insurance, applicant produces list of existing insurances, and states his honest belief that it is correct, and insurance company, with means to verify statement, fails to do so, and list proves incorrect, this will not avoid policy subsequently issued, containing express warranty that all the facts and circumstances have been truly stated in application, and a condition that "if any material fact or circumstance shall not have been fairly represented" the policy shall be void. *Id.*

10. If previous to expiration of policy, company's agent agrees orally to renew same, and minds of parties meet as to terms, company is bound, and can avoid liability only by tendering renewal receipt and demanding premium, and failure of insured to pay same, or by notice that it refuses to carry risk. *King* v. *Ins. Co.*, 148.

11. Denial of all liability waives proof of loss required by policy. *Id.*

12. Clause in policy that any person other than assured procuring the insurance, "shall be deemed to be the agent of the assured named in this policy, and not of this company under any circumstances whatever, or in any transactions relating to the insurance," imports nothing more than that person procuring insurance is to be deemed agent of insured in matters immediately connected with procurement of policy; and subsequent notice to him of its termination by company was not notice to insured. *Grace* v. *Ins. Co.*, 149.

13. Parol evidence of custom to give such notice to such agents, inadmissible. *Id.*

14. Steamboat on which were goods insured against "immediate loss by fire," collided, and a fire caused thereby prevented the goods being saved. Vessel sank before goods were touched by the fire. Parties agreed that in case of plaintiff's recovery amount should be a sum stated, unless it should appear on proper evidence that amount should be charged. Judge excluded evidence of expert, offered by defendant, that the goods in that situation, in sinking boat, were of no value; and instructed jury that if this was loss by fire within policy, they should find as damages sum agreed upon. *Held*, that defendant had no ground of exception. *Dis. Ex. Co.* v. *Ins. Co.* 272.

15. Sale by one partner to his copartner, and mortgage back of seller's share of partnership property, upon which there is insurance policy, issued to partnership, not a breach of condition in policy against sale without written consent of insurer: and *held*, further, in action on policy in which both partners joined, that it could not be said, as matter of law, after a finding for plaintiffs, that there was breach of condition that policy should be void, if, without written assent of insurer, "the situation or circumstances affecting the risk shall, by or with the advice, agency or consent of the insured, be so altered as to cause an increase of such risk." *Powers* v. *Ins. Co.*, 548.

INTEREST. See BILLS AND NOTES, 4; DAMAGES, 3; EVIDENCE, 11; LEGACY, 1; LIMITATIONS, STATUTE OF, 3; PATENT, 5; USURY.

INTERNATIONAL LAW. See EQUITY, 6.

1. Act of Parliament of Canada enacted that scheme of arrangement of affairs of railroad company, which had received assent of majority of bondholders, should be deemed to be assented to by all the bondholders. *Held*, that act was binding on citizens of United States who were bondholders at time of enactment. *Railroad Co.* v. *Gebbard*, 55.

2. Every person who deals with foreign corporation impliedly subjects himself to such laws of foreign government, passed or to be passed, affecting powers and obligations of corporation, as known and established policy of that government authorizes. *Id.*

INTOXICATING LIQUORS. See CRIMINAL LAW, 6; MUNICIPAL CORPORATION, 15.

INTOXICATION. See CRIMINAL LAW, 19, 20, 27.

JUDGMENT. See ATTORNEY, 4; EQUITY, 12; JUDICIAL SALE, 2; MORTGAGE, 14; PRACTICE, 2.

1. Entered by clerk as by default on complaint imperfecly verified and not stating cause of action, irregular not *void*. *Anderson* v. *Anderson*, 682.

2. Motion to set aside judgment for mere irregularity must be made at same term, or if judgment is entered in vacation, at next term at which motion can be heard. *Id.*

3. In order for *nunc pro tunc* entry of judgment to bind person not a party, it must appear that he had notice of judgment really rendered at time his rights were acquired or liability fixed, or that he had notice of application and opportunity to appeal. *Koch* v. *Railroad Co.*, 149.

JUDICIAL PROCEDURE. See CERTIORARI, 1.

JUDICIAL SALE. See HOMESTEAD, 11; TRUST AND TRUSTEE, 3, 4.

1. Purchaser of land sold under decree erroneous, but not void, protected, though decree afterwards set aside. *Moore* v. *Woodall*, 273.

2. Purchaser at, runs no risk in respect to correctness of legal principles on which judgment, under which he purchases, is founded; reversal of such judgment subsequent to passage of his title will not affect it. He cannot impeach decree under which he purchased, on application to be discharged from his contract. *Shultz* v. *Sanders*, 549.

JURISDICTION. See EQUITY, 13, 16, 17; HUSBAND AND WIFE, 8.

JUROR AND JURY. See CRIMINAL LAW, 4, 8.

1. In trial of appeal from determination of commissioners as to value of real estate appropriated by railroad company, it is misconduct for two of jurors, without direction or consent of court, after evidence has been submitted and before argument, to go together and examine real estate in controversy. *Ortman* v. *Railway*, 749.

2. Where jury is polled in murder case, each juror should say whether he finds the prisoner guilty of murder in the *first* or *second* degree; where response is simply "guilty," that clerk, immediately after, called upon them to hearken to the verdict as the court has recorded it—"your foreman saith that J. W., the prisoner at the bar, is guilty of murder in the first degree, and so say you all," does not save verdict. *Williams* v. *State*, 71.

3. After verdict, it is too late to object to age of juror, though not known before. *Johns* v. *Hodges*, 72.

4. Judge may in his discretion exclude from panel juror not legally qualified; exceptions do not lie to act. He may put legal juror off, but cannot allow illegal juror to go on. *Snow* v. *Weeks*, 72.

JUSTICE OF THE PEACE. See PRACTICE, 1.

LACHES. See MORTGAGE, 12; SPECIFIC PERFORMANCE, 2.

LANDLORD AND TENANT. See FIXTURE, 2; FRAUDS, STATUTE OF, 1, 2; PARTNERSHIP, 14; VENDOR AND VENDEE, 1.

1. Where person occupies house as servant of another, it must appear that occupancy is for master's benefit and as accessory or aid to performance of servant's duties. *Snedaker* v. *Powell*, 750.

2. Where B. employs P. to labor for him on farm for eight months from March 6, 1883, at $50 per month and agrees to furnish him a house from that date to March 1, 1884, free of charge, and subsequently permits P. to transfer his interest and sublet house to S., P. is not servant after eight months have expired, and his occupancy of house thereafter is that of tenant, and S. holds under P. and not under B. *Id.*

LARCENY. See CRIMINAL LAW, V.

LEASE. See COVENANT, 2; LANDLORD AND TENANT; REAL ESTATE.

LEGACY. See DECEDENTS' ESTATES, 1, 2; DOWER; WILL, 9.

1. When given to one not testator's child, nor to whom he stood *in loco*

LEGACY.

parentis, payable "at the age of twenty-one years," legatee only entitled to interest from time legacy is payable. *Weatherly* v. *Kier*, 549.

2. If one of several executors, who are also the residuary devisees, is devisee of parcel of land on condition of paying a certain legacy, the giving of a bond by all the executors, conditioned to pay debts and legacies, will not vest in him an absolute title, which he can convey to *bona fide* purchaser free of lien of legacy; and such purchasers cannot maintain bill to compel legatee to seek payment from residuary estate, or from sureties on the bonds before proceeding against the land. *Trustees, &c.*, v. *Smith*, 72.

LIBEL. See SLANDER AND LIBEL.

LICENSE. See CONTRACT, 11; MUNICIPAL CORPORATION, 41–43; PATENT, 3.

LIEN. See ATTORNEY, 2; CONTRACT, 6; HUSBAND AND WIFE, 13; MECHANICS' LIEN; MORTGAGE, 9, 14, 17.

LIFE TENANT.

New shares of capital stock in corporation, representing its surplus property and distributed to its stockholders, not income. *Petition of Brown*, 482.

LIMITATIONS, STATUTE OF. See MORTGAGE, 2; SURETY, 9.

1. Part payment of note and indorsement of it on Sunday not sufficient to toll statute. *Witcher* v. *McConnell*, 273.

2. Payment upon note owned by two persons of amount owned by one will not renew note in favor of other. *Id.*

3. Payment of interest on note of firm by co-partner, after dissolution, tolls running of statute. *Casebolt* v. *Ackerman*, 750.

4. Period of coverture cannot be added to that of minority of sane person in order to prevent running of statute. *Farish* v. *Cook*, 482.

5. Municipal corporations bound by. *City* v. *McKibbin*, 345.

6. When statute is pleaded and adverse possession for statutory period is shown in action of ejectment brought by one who has recently attained to majority, burden is on him to prove that action was commenced within three years from majority. *Yell* v. *Lane*, 345.

7. Payment on account of scheduled note out of debtor's assets by his assignee for benefit of creditors avoids bar of statute under sect. 24 Kansas code; and this notwithstanding proceedings under such assignments are controlled by general statute. *Letson* v. *Kenyon*, 345.

8. If debtor, residing out of state when cause of action accrues, comes to reside in state, not necessary that creditor have knowledge of this fact in order to set statute in operation; enough if he can acquire such knowledge by reasonable diligence. *Davis* v. *Field*, 750.

9. Due bill, headed by place and date, and continuing "Due J. C. Douglass five hundred dollars in brickwork at ten ($10) per thousand measured in the usual way," is payable at once without demand, and statute runs from its execution. *Douglass* v. *Sargent*, 750.

10. Amendment by substituting another person as plaintiff, made after the period limited by statute in a suit commenced within that period, will not allow statute to be pleaded: but the introduction of new cause of action would. *Thomas* v. *Ins. Co.*, 212.

11. At death of trustee who had given no bond as such, if identity of trust property is lost, *cestui que trust* stands in position of general creditor of estate; or if trust is not terminated estate becomes at once liable to new trustee who may be appointed, and statute applies, though new trustee is not appointed. *Fowler* v. *True*, 805.

12. Debtor in bankruptcy wrote to creditor: "I shall pay you all I owe you with interest, but at this time I cannot. As soon as I can, I shall pay you. When I can, I shall pay up all my debts, and yours shall be the second that I pay. To pay you now, I cannot spare a dollar from my business, but if you will wait, I think I can pay you some time." *Held*, to amount only to conditional promise to pay when able; and in absence of evidence of ability, under Mass. Pub. Sts. c. 78, § 3, not to deprive debtor of relying upon discharge in bankruptcy, in bar of recovery of judgment upon debt. *Elwell* v. *Cunner*, 549.

LIMITATIONS STATUTE OF.

13. Debtor in bankruptcy wrote to creditor: "My lawyer says I must not pay anyone a dollar until I get through bankruptcy, then I can pay if I want to do so. I shall pay you all and the interest, but you will have to give me time. This is all I can say now." *Held*, not such evidence of new or continuing contract, within Mass. Pub. Sts. c. 78, § 3, as would deprive debtor of relying upon discharge in bankruptcy. *Elwell* v. *Cumner*, 549.

14. Defendant without leave took plaintiff's iron; in following year he promised to pay for it. *Held*, that statute commenced to run at time of promise. *Farnham* v. *Thomas*, 550.

LIVE STOCK CARRIERS. See COMMON CARRIER, 21.

LUNATIC. See INSANITY.

MALICIOUS PROSECUTION.

1. Express malice insufficient, if defendant with good reason believed that plaintiff committed offence. *Murphy* v. *Martin*, 149.

2. There must first be final determination of the criminal action, as by entry of *nolle prosequi* for any reason other than some irregularity or informality in information itself. *Woodworth* v. *Mills*, 682.

3. If defendant instigated the criminal action without probable cause, that person who, at his instigation, made criminal complaint had probable cause to believe it true, no defence. *Id.*

4. In action against several defendants for conspiring together to procure plaintiff to be indicted and convicted by perjured testimony, and for causing him to be so indicted and convicted, gist of action is alleged tort and not alleged conspiracy. *Garing* v. *Fraser*, 805.

5. At common law action does not lie against witness for perjury. *Id.*

6. Simple *nol pros.* is not such a determination of indictment as will entitle accused to maintain this action. *Id.*

MANDAMUS. See CONSTITUTIONAL LAW, 20; CORPORATION, 4; COURT, 2; ERRORS AND APPEALS, 2; MUNICIPAL CORPORATION, 12, 17.

1. Where statute clothes county board with ultimate discretion as to performance of certain act, or is merely directory and not mandatoty, mandamus will not lie to compel performance. *Supervisors* v. *People*, 806.

2. Performance of ministerial duty by public officer may be compelled by, in absence of other relief; but where such officer in determining upon performance of public duty, is called upon to use official judgment and discretion, his exercise of them, in absence of fraud, bad faith and abuse of discretion, will not be controlled or directed by mandamus. *State* v. *Moore*, 346.

MARRIAGE. See HUSBAND AND WIFE, I.

MASTER AND SERVANT. See CONFLICT OF LAWS, 4; LANDLORD AND TENANT, 1, 2; MUNICIPAL CORPORATION, 39; NEGLIGENCE, 6, 11, 12; RAILROAD, 5, 6; TROVER, 5.

1. Railway station agent having general charge of tracks in and about station is fellow servant of locomotive engineer. *Brown* v. *Railway Co.*, 335.

2. Where step of railroad engine is slightly defective, and conductor has full knowledge of its conditon and continues to use it, he cannot recover for injuries resulting therefrom. *Jackson* v. *Railroad*, 346.

3. Reversal of engine in switching and in making up trains, not negligence *per se*, and negligence is never presumed without proof. *Id.*

4. When it exists a master's duty to give notice to servant of risks of employment, is absolute, and is not performed by delegating it to competent third person who fails to give the information. *Wheeler* v. *Wason Mfg. Co.*, 273.

5. Master is liable for act of his servant when done within scope or general course of his employment, although done contrary to master's orders. *Heenrick* v. *Pullman*, 459, *and note*.

6. Statute making railroad "liable to any person injured for all damages sustained" by reason of neglect to ring bell in certain manner, does not make

MASTER AND SERVANT.
it liable for injury caused by negligence of fireman, in this respect, to fellow-servant. *Randall* v. *Railroad Co.*, 212.

7. Corporation owning lighter is bound to use reasonable care in maintaining in suitable condition the appliances for hoisting, &c.: but if it furnishes such appliances, and employs competent servant to see that they are kept in proper condition, it is not liable for injury to another servant in consequence of neglect of first servant in not renewing what he knew to be defective through wear: whether the fellow-servant acted as such, merely, or as representative of master, is question of law. *Johnson* v. *Towboat Co.*, 273.

8. Any negligence on part of other employees of railroad in connection with their business, from which serious injury results, constitutes criminal negligence, and contract on part of employee waiving right of suit therefor is contrary to public policy and void. *Cook* v. *Railroad*, 149.

9. In action against railroad company to recover for death of locomotive engineer killed through negligence of train dispatcher, plaintiff must show that they are not fellow-servants. *Blessing* v. *Railway Co.*, 150.

10. Repairman on railroad, while proceeding down track on hand car on very foggy morning, to surface up track, was run into by extra train coming in opposite direction, at rapid speed and without previous warning, and was permanently injured. It was company's practice, of which W. had knowledge, to run extra trains without previous notice. *Held*, that he could not recover. *Railroad Co.* v. *Wachter*, 72.

11. Where railroad employee, rightfully engaged in repair of freight car belonging to employer, calls upon his son, minor under eleven, to render him necessary temporary assistance in work, son is not trespasser; and if he while so assisting, without any negligence on his part or his father's, is injured through negligence of agents and servants of another railroad, in backing cars upon side track while car is being repaired, latter company is liable for damages for injury. *Railroad Co.* v. *Gallagher*, 593, *and note.*

12. The apparatus for raising certain frame-work consisted of windlass, tackle, blocks, ropes, &c., all of which had been placed in position and adjusted under direction of foreman. Frame-work fell by reason of giving way of anchor post, which had not been set in ground to sufficient depth, and injured workman. *Held*, that whole apparatus for hoisting could not be considered as single machine which defendant was bound to furnish adjusted and in position, but placing and adjustment of detached appliances were part of work to be done. The injury was therefore caused by negligence of foreman in management of appliances. *Peschel* v. *Railroad*, 806.

13. Such foreman had no general authority to employ or discharge men, but was subordinate to master carpenter. *Held*, that foreman was fellow servant of plaintiff. *Id.*

14. Fact that brakeman in employ of railroad knew, or might have ascertained, that draw-bars of locomotive engine and of car, to which it was to be coupled by him while standing upon plank in front of engine, were of unequal height, so that they would be likely to pass instead of coupling, though furnishing strong evidence of carelessness, will not, as matter of law, preclude him from maintaining action for injuries occasioned by reason of draw-bars so passing each other, that of engine being too low for purpose for which it was used. *Lawless* v. *Railroad Co.*, 550.

15. Railroad company not responsible for negligent acts of postal clerks upon its trains. *Master* v. *Railroad*, 806.

16. Evidence showed that small mail-bag was thrown either from the mail-car, express-car or baggage-car. Bag could not lawfully have been in any other than mail-car, and no person other than postal clerk could lawfully enter such car or throw bag therefrom. *Held*, that in absence of evidence to contrary, it will be presumed that bag was thrown from mail-car by postal clerk. *Id.*

17. Bag was usually thrown from train about 200 feet west of depot, and there was no evidence that it had ever been thrown off at depot prior to occasion in question. *Held*, that company was not chargeable with notice that it was likely to be thrown off at depot, and hence was not bound to guard, by

MASTER AND SERVANT.
notice or otherwise, against injury to employee resulting from its being thrown off there. *Master* v. *Railroad*, 806.

18. Defendant contracted to tear down wall built of two courses of brick, the inner of which supported chimney down to second floor. There was evidence tending to show that on day of accident defendant's foreman discovered crack between the courses of brick where chimney was; that he notified defendant who was present in direction and control of work; that foreman called plaintiff to aid in putting up braces to prevent wall from falling, and while they were at work wall and chimney fell and plaintiff was injured. *Held*, sufficient evidence of negligence to carry case to jury. *Ryan* v. *Tarbox*, 274.

19. Where number of servants are working together and one has power to control and direct actions of others, master is only liable for negligent act of one in charge whereby another servant is injured, when the negligent act arises out of and is direct result of authority conferred by master. *Railroad Co.* v. *May*, 274.

MECHANICS' LIEN.

1. A. made verbal contract to purchase lot of B., took possession, erected building, and failed to pay for labor and materials. One lien creditor attached building as personalty and another as realty. *Held*, that building was part of B.'s real estate, and that, as against him, neither attachment was valid. *Dustin* v. *Crosby*, 73.

2. A. by special contract engaged to build house for B., and afterwards assigned contract to C. At time of assignment, A. had taken no steps to secure mechanics' lien. B. consented that C. should finish house under contract. *Held*, that this was a consent to transfer of contract. *Held*, further that C. was entitled to perfect and enforce mechanics' lien; using name of assignors, it not appearing that C. entered into any contract with B., or that A. was ever released by B. *McDonald* v. *Kelly*, 619.

MINES AND MINING.

Deed giving right to mine, excavate and remove coal, carries with it right to go upon land and dig for coal or sink coal shaft. *Ewing* v. *Coal Co.*, 750.

MINOR. See INFANT; GUARDIAN AND WARD; PARENT AND CHILD.

MISREPRESENTATION. See FRAUD, 1.

MISTAKE. See EQUITY, 7.

MORTGAGE. See BILLS AND NOTES, 31; DEED, 3; DURESS, 1, 2; EQUITY, 22; SUBROGATION; TRUST AND TRUSTEE, 2; WILL, 4.

I. *Generally.*

1. Mortgages executed on same day have equal lien, except where contrary intention appears. *Coleman* v. *Carhart*, 683.

2. Remedy on, not lost because personal action on mortgage note is barred by Statute of Limitations. *Ballou* v. *Taylor*, 620.

3. In Ill. the record of a trust deed reciting that grantor had on same day made his promissory note, without giving amount, will not charge subsequent *bona fide* purchasers, without actual notice, with knowledge of amount. *Bullock* v. *Battenhousen*, 214.

4. If debt is not ascertained, mortgage should give such data as will put person interested on track of discovery. *Id.*

5. Where notes secured by mortgage of real estate were endorsed before maturity and delivered to plaintiffs for valuable and adequate consideration paid by G., to be held as collateral security for G.'s indebtedness to them, it is no defence to foreclosure suit by plaintiffs that notes have been paid by mortgagor to mortgagee since assignment, and in ignorance of it. *Mead* v. *Leavitt*, 274.

6. When mortgage has been foreclosed, and premises are not worth enough to pay mortgage debt, excess may be pleaded as equitable offset; and, mortgage having been executed to both orators, but usury having been paid to one for benefit of both; mortgage notes having been sold and merged in judgment in name of third party, and then repurchased by orators, and mortgage foreclosed by them and in their names; action at law having been brought to recover usury against party alone to whom same had been paid, and hence excess

MORTGAGE.
could not at law be pleaded in offset. *Held*, that bill in equity would lie to compel equitable offset mortgagor being insolvent. *Smith* v. *McDonald*, 619.

II. *Of Chattels.*

7. Of personal property not yet *in esse*, production of which is in contemplation of parties, will impose lien in equity thereon when produced. *Sutherford* v. *Stewart*, 683.

8. Of specified number of articles out of larger number, not good against creditors and others acquiring adverse rights, unless it furnishes data for separating mortgaged part from mass. *Dodds* v. *Neel*, 346.

9. Actual knowledge on part of judgment creditors, of mortgage of growing wheat, not filed with proper township clerk, does not prevent the lien created by levies under their judgments being superior to lien of mortgage, nor is delivery of wheat, after it has been harvested and thrashed, to third person in pursuance of agreement to sell it to him for cash, made by sheriff at request of judgment creditors but without any order from court or judge to sell at private sale, an abandonment of the levies. *Houk* v. *Condon*, 346.

III. *Of Realty.*

10. No precise form necessary, but there must be a present purpose to pledge the land. *Association* v. *Adams*, 73.

11. Whether deed for land is an absolute sale with agreement for repurchase by grantor, or a mortgage, depends upon intention. *Bearss* v. *Ford*, 213.

12. Delay of four years in filing bill by former owner to set aside sale of his real estate under trust deed, on ground of alleged irregularities and inadequacy of price, when he knew of such sale shortly after it was made, and neglected to redeem property by paying sum due from him, such privilege having been offered by purchaser, and he allowed taxes to accumulate to large amount, was held such laches as to bar relief. *Hoyt* v. *Pawtucket Inst.*, 751.

13. Where mortgagee of lands recovered judgment on bond, sold mortgaged premises under execution, and purchased them himself, mortgagor is not, *ipso facto*, entitled to injunction to restrain him from selling other lands of mortgagor under his judgment, on ground that purchase of equity of redemption extinguished mortgage debt, but mortgagor may enjoin such other sales until it shall have been determined, in Court of Chancery, whether mortgagee ought to be permitted to raise any more money, by execution, on account of debt, and if so, how much. *Lydecker* v. *Bogert*, 469, *and note.*

14. Owner of real estate conveyed same to trustee to secure debt to third person. After granting clause to trustee in fee, was condition that if debt was paid at maturity, conveyance was to be void, otherwise trustee was authorized to sell land at public sale to pay same. *Held*, that conveyance was deed of trust in nature of mortgage, and not an absolute conveyance in trust to secure the debt; that legal title remained in mortgagor in possession after default, subject to right of trustee or creditor to enforce condition of mortgage; and that judgment against grantor who remained in possession with acquiescence of mortgagee, after default, was lien on premises subject to such mortgage. *Martin* v. *Alter*, 347.

MUNICIPAL CORPORATION. See ATTORNEY, 1; CONSTITUTIONAL LAW, 5, 7, 10, 13, 14, 19, 23; EVIDENCE, 1; HIGHWAY, 1, 2; LIMITATIONS, STATUTE OF, 5; MANDAMUS, 1; NUISANCE; PRACTISE, 3; RAILROAD, 11; TAX AND TAXATION, 4, 7.

1. City is not bound to maintain railing in front of basements that line its business streets. *Beardsley* v. *City*, 117.

2. *Bona fide* holder of municipal bonds not prejudiced by noncompliance with merely formal requirements of statute in their issue. *Rouede* v. *Mayor*, 306, *and note.*

3. Overdue coupons attached to such bonds insufficient to put purchaser on inquiry, so as to charge him with notice of defects of title. *Id.*

4. When issue of municipal bonds may be enjoined. *Id.*

5. Provisions of city charter as to duration of terms of officers must be strictly observed, and ordinance beyond scope of powers granted by charter is void. *State* v. *Newark*, 620.

MUNICIPAL CORPORATION.

6. Whole of ordinance not necessarily inoperative because some of its sections are inconsistent: section not dependent on inconsistent sections may stand. *State* v. *Newark*, 620.

7. Must use ordinary care to make or keep bridge over ditch in highway, whether constructed by it or not, safe and convenient crossing both by day and night. *Town* v. *Vinton*, 347.

8. Statute directed county commissioners to cause bonds of county to be issued in certain event, signed by chairman and attested by county clerk under seal of county. *Held*, that signature of clerk was essential, even though he had no discretion to withhold it. *Bissell* v. *Township*, 347.

9. Powers of, in this country analogous to those of similar bodies in England. *Claiborne County* v. *Brooks*, 483.

10. Power to issue negotiable paper is expressly foreign to purposes of creation of counties and townships, and is never to be conceded except by express legislation, or by necessary or at least very strong implication from such legistion. *Id.*

11. Where charter requires proceeding to be instituted by ordinance, it cannot be effected by resolution merely. *State* v. *Barnet*, 620.

12. When mayor declines to sign bonds authorized by ordinance to pay for sewers, &c., directed by resolution, a legislative act and requiring an ordinance, *Held*, that he will not be compelled by mandamus to sign them. *Id.*

13. Clerk of, whose duty by law it is to keep records, unless councils otherwise direct, is mere agent of corporation, and writ of *certiorari* to bring up such records is properly directed to it. Return under its direction by such officer is correctly made. *State* v. *Harrison*, 620.

14. Is not liable for simply failing to provide drainage for surface water. *City* v. *Spence*, 213.

15. Under power to pass ordinances for the peace and good order of the borough as they may deem expedient, a common council may pass an ordinance prohibiting sales of vinous, spirituous and malt liquors after 10 P. M. and before 4 A. M. *State* v. *Inhabitants*, 213.

16. Municipal body cannot deprive a member of his place for causes, affecting his eligibility, that existed at time of his election. *Ellison* v. *City*, 137.

17. Where, in such case, one is removed, and his successor elected and inducted into office under power to fill vacancies, such successor is *de facto* officer, and removed member cannot be reinstated by mandamus, but must resort to *quo warranto*. *Id.*

18. Power to "borrow money on the credit of the city, and to issue bonds" therefor, insufficient to authorize subscription to railroad stock and issuing bonds in payment thereof. *City* v. *Railroad Co.*, 275.

19. Legislature can authorize issuing of bonds by city in payment of such subscription, in accordance with result of election previously held when no power existed to submit question to vote, notwithstanding any irregularity in the election or the notice thereof. *Id.*

20. Power to issue bonds in such case not affected by adoption of constitution, after legalizing act, forbidding such subscription, &c., but providing that it should not affect municipality authorized by vote to make such subscription under existing laws, prior to adoption of constitution. *Id.*

21. Receiving and opening bids does not prevent abandonment of work or change of plan; and bidding in response to advertisement containing reservation of right "to reject any or all bids," is a consent to this reserved right. *Keogh* v. *Mayor*, 274.

22. Courts only interfere with discretionary powers of municipal corporations or their officers to protect private rights, to restrain assumption of powers not granted, or to guard public interests against any corrupt or fraudulent abuse of powers granted. They do not interfere merely on the ground of inexpediency. *Id.*

23. If between sidewalk and carriage-way of city street there is a grassed space, over which footpath has been worn by persons going to or from another street, abutting but not crossing this street, city is liable to person injured by defect in such path, if same was known to and recognised by city as part of

MUNICIPAL CORPORATION.
wrought line of travel, in absence of any other path, or barrier or warning. *Aston* v. *City*, 73.

24. Incorporated village not liable for injury caused by defect in street-crossing when charter does not impose legal duty of keeping highways in repair. Such duty not imposed by acceptance of charter which merely allowed village, as volunteer, to take supervision of highways, town never having surrendered right of control over them, nor having been released from its obligation to repair. *Parker* v. *Rutland*, 621.

25. Commissioners authorized by statute, upon obtaining consent of tax-payers, to issue town bonds under hands and seals of commissioners, issued bonds without such consent, on which their seals were omitted by oversight and mistake; *Held*, that as to *bona fide* purchaser, the town would be restrained from setting up the want of seals. *Township* v. *Stebbins*, 210.

26. Legislative power, held by legislature or municipalities, is in its nature governmental and discretionary, and, as a rule, a right of action as for tort will not arise from any exercise of discretion in regard to it. *Burford* v. *Grand Rapids*, 501, *and note*.

27. But if act done by municipal corporation would be tortious if done by natural person, corporation is similarly liable. *Id.*

28. Common council having full control of streets, and having licensed particular one for coasting—a sport not necessarily a nuisance—its determination is an exercise of its discretionary authority, and, therefore, no action will lie against city by reason of accident resulting from such use. *Id.*

29. Has right, under power to preserve health and safety of inhabitants, to pass ordinances creating boards of health, appointing health commissioners with other subordinate officials, regulating removal of house dirt, night soil, refuse, offal and filth, by persons licensed to perform such work, and providing for prohibition, abatement and suppression of whatever is intrinsically a nuisance. *Boehm* v. *Mayor*, 482.

30. Statute empowering city authorities to construct sidewalks, and make local assessments on property fronting on same, "for so much of the expense thereof as they shall deem just and equitable," is unconstitutional; in that there is no certain and legal standard for assessment. Such assessments should be made in view of benefit to adjoining land. *Barnes* v. *Dyer*, 751.

31. Not liable for injury occasioned by negligence of driver employed to remove ashes, &c., to public dumping ground, though driver was at time driving horse and cart owned by city, and his negligence was in making dump from cart. *Cordict* v. *City*, 751.

32. Use of road for public travel, however extensive, insufficient to constitute it a highway by adoption so as to impose duty upon town to keep it in repair. There must be in addition some act of town recognising it as highway —as putting same in rate bills of highway surveyor, expending money thereon, shutting up old road, leaving no other avenue for travel, &c. *Tower* v. *Rutland*, 550.

33. Plaintiff claimed that her horse became frightened at dump-cart "tipped up" on side of street opposite carriage shop. *Held*, that what one of selectmen said immediately after accident was not admissible to charge town with liability, not being connected with any official act. *Id.*

34. Power of city of Baltimore to make police regulations must be derived from legislature by express grant or fair and reasonable intendment. Within power granted, degree of necessity or propriety of its exercise rests exclusively with proper corporate authorities; whenever question of existence or limit of power is raised, it becomes plain duty of courts to see that corporate authorities do not transcend authority delegated. *State* v. *Mott*, 483.

35. Particular use of property declared nuisance by ordinance is not thereby made so. Where city charter only confers authority to "*prevent and remove* nuisances," mere possibility that all lime-kilns within city limits may, in future, become nuisances, does not justify city in prohibiting business entirely in anticipation. *Id.*

36. Where supposed addition to city of first class has never been subdivided into lots, blocks, streets and alleys, by proprietors with any intention that it

MUNICIPAL CORPORATION.

should become part of city, and no map or plat of such supposed addition has ever been made, acknowledged or recorded, by such proprietors, or with their consent or authority, and such proprietors have never consented that such supposed addition should be made or become part of city. *Held*, that ordinance defining boundaries of city, and including such supposed addition therein, does not bring same within said boundaries. *City* v. *Gillet*, 778.

37. And where city claims that such supposed addition is within city limits, but such claim has always been disputed by proprietors, they are not estopped from maintaining action to enjoin collection of tax levied by city upon such property. *Id.*

38. Where city authorized railroad company to lay double tracks on part of street, reserving right to require superstructure, except rail, to be covered with plank, and also to require company to light road with gas. *Held*, that city's supervision of, and responsibility for street, subject only to use by company as granted, continued; although space not granted to company was ample for passage of persons who had, or might have, occasion to use it as a street, and although other part had not been kept up as a street, and was in exclusive possession of company. *City* v. *McGill*, 620.

39. Principle of *respondeat superior* applies to municipal corporations, where acts of their servants or agents refer to powers and duties ministerial in their nature and character. City organized under laws of Ohio held title to and right of possession of public cemetery located within its limits, which was under management, control and regulation of board of cemetery trustees, chosen by electors of corporation and removable for cause by city council. Employee while engaged in cemetery in improving vault owned by city, was injured through carelessness and want of skill of superintendent of cemetery, and negligence of trustees. Employee worked under superintendent and both received appointment from board of trustees, subject to approval of council. *Held*, that city was liable for injuries to employee. *City* v. *Cone*, 621.

40. Bonds were issued by county in excess of limited per cent. of assessed valuation: they contained recitals that they were issued in pursuance of an election and under act of assembly and state constitution, and the required certificates of certain officers were endorsed on said bonds. *Held*, that purchaser, amount of bonds issued being known, could only protect himself by examination of assessment, a "public record equally accessible to all intending purchasers of bonds," and by calculation determining whether issue of bonds was within limit. *Dixon County* v. *Field*, 414.

41. Upon *certiorari* to review action of common council in revoking license without notice to licensee, question is whether such proceeding was according to law, and not whether license has been so violated as to justify revocation. *Common Council* v. *State*, 414.

42. Fact that such license expired about time proceedings were reviewed on *certiorari* does not affect right of licensee to have revocation set aside. *Id.*

43. Common council, in revoking license, represents city, and where it has acted in good faith, though under mistake as to its powers, costs on proceeding by *certiorari* to review its action may be adjudged to be paid by city. *Id.*

NATIONAL BANK.

Corporation received stock of, as collateral security, certificate of which was originally made out in name of president, as such; by direction of corporation stock was within few days transferred to irresponsible employee, who executed irrevocable power of attorney in blank, and certificate was so held by company for some years. Neither company nor its employee collected any dividends thereon, or exercised any act of ownership over it. Plan was adopted in order to avoid incurring liability on part of pledgee as shareholder, and bank at time of transfer was in prosperous condition, but failed several years afterwards. *Held*, that pledgee was not liable as shareholder. *Anderson* v. *Warehouse Co.*, 483.

NEGLIGENCE. See BILLS AND NOTES, 17; COMMON CARRIER, 3, 4, 7; CONFLICT OF LAWS, 4; CONTRACT, 8; DAMAGES, 9; EVIDENCE, 7, 16;

NEGLIGENCE.

FERRY; INNKEEPER, 1–3; MASTER AND SERVANT, 2, 3, 6–8, 11, 12, 14, 18, 19; MUNICIPAL CORPORATION, 23, 31, 39; RAILROAD, 1, 6, 9, 12, 13; TELEGRAPH, 1, 2.

1. Mere fact that person attempting to cross bridge on dark night knows it is not provided with railing, will not prevent recovery for fall therefrom. *Loewer* v. *City*, 150.

2. Whether want of warning light at a bridge at night, tends to establish negligence is for the jury, as also is question of plaintiff's contributory negligence in using dangerous sidewalk, when he might have walked in the roadway. *Id.*

3. If plaintiff injured at highway crossing by railway train omits some slight precaution for his safety, and company omits all care, he can still recover. *Wabash Co.* v. *Wallace*, 621.

4. If accident by which plaintiff was injured resulted from intervening cause, and was only connected with defendant's negligence by fact that latter brought plaintiff into position where accident occurred, plaintiff cannot recover. *Lewis* v. *Railway Co.*, 604.

5. Where 19 month's old child was injured by being run over in highway adjoining its home, *held*, that its being there unattended, was *prima facie*, but not conclusive evidence of contributory negligence on part of person in whose charge it was. *Gibbons* v. *Williams*, 275.

6. In suit by employee against railroad for injuries inflicted by negligence of co-employee, it is incumbent upon plaintiff to show that injury was result of neither fault nor negligence on his part. Question of negligence belongs peculiarly to jury and except in clear case, where there is no conflicting evidence, should be submitted to them. *Redding* v. *Railroad*, 807.

7. Although plaintiff may have been guilty of negligence, and such negligence may, in fact, have remotely contributed to accident, yet, if defendant could, in the result, by exercise of reasonable care and diligence, in view of circumstances of case, have avoided accident, plaintiff's negligence, being more remote cause, will not excuse defendant. *Kean* v. *Railroad Co.*, 415.

8. Railroad corporation not liable for carelessness or wilful act of independent contractor engaged to construct road. *Hughes* v. *Railroad*, 73.

9. Right reserved to company to direct as to quantity of work or condition when completed, is not a right to control mode or manner of doing work. *Id.*

10. Contracts in respect to real estate are within the rule of non-liability on part of employer for wrong of contractor, except where contract is for erection of nuisance, or injury to third persons, necessarily or naturally results from the doing of the work in the manner contracted for. *Id.*

11. Where party drives upon street car track, without looking to see whether car is coming, and then, with ample opportunity, refuses to get out of the way, he cannot recover in action on the case for negligence of driver. *Wood* v. *Railway Co.*, 243.

12. If action were trespass it might become necessary to decide whether injury was purposely inflicted; but car company would not be liable for wilful trespass of driver. *Id., and note.*

13. One who, knowing that severe storm on Sunday had prostrated fences, on Monday evening turned his cattle upon unenclosed lands, without inquiry as to whether railroad fences abutting them were injured, was guilty of such contributory negligence as would defeat his recovery for injuries received by such cattle on track. *Carey* v. *Railroad Co.*, 683. See RAILROAD, 12.

14. Railroad bound only to use ordinary diligence in repairing its fences. *Id.*

15. Where two railroad companies have, by agreement, joint occupancy of depot grounds, in which their respective tracks are so situated and used that servants of the two companies must necessarily, in proper discharge of their duties, pass over each other's tracks, each company will owe same duty to servants of other company that it does to its own. *Railroad* v. *Frelka*, 807.

16. Sign upon such grounds warning all persons to keep off tracks, &c., would not be regarded as applying to servants of either company. *Id.*

17. In action against railroad, on Mass. St. of 1881, c. 199, § 2, for running

NEGLIGENCE.
over and killing girl 16 years old, at grade crossing, there was contradictory evidence upon question of defendant's neglect to give signals required by law, but it was conceded that head light was burning, that girl was familiar with locality, that track was visible for nearly a mile, and that, at time, it was not dark, but twilight. Plaintiff's evidence tended to show that, when engine was within 3 to 6 rods of crossing, whistle was blown twice, and girl, then within few feet of track, quickened her pace and ran upon track and was killed. *Held*, that burden was upon defendant to show that girl was guilty of gross or wilful negligence: *also*, that court could not say, as matter of law, that attempting to cross track, under such circumstances, was gross or wilful negligence. *Copley* v. *N. H. and N. Co.*, 551.

18. Defendants, who had contracted to thresh plaintiff's grain, put in operation their steam engine within four rods and upon windward side of several stacks of grain, on hot, dry day when wind was blowing a gale. Stacks were destroyed by fire from engine. *Held*, that although engine was furnished with all proper appliances to prevent escape of fire, defendants were guilty of negligence. *Martin* v. *Bishop*, 414.

19. But plaintiff, whose employees were assisting defendants, having directed placing of engine, and though present and knowing the danger, not having objected when it was put in operation, was guilty of contributory negligence. Facts being undisputed, special finding of jury that plaintiff was not guilty of negligence, *held* to be but erroneous conclusion of law. *Id.*

20. In action against railroad by passenger to recover for injuries, plaintiff's evidence must be assumed to be true, in considering question whether there was sufficient legal evidence to sustain recovery. *Railroad Co.* v. *Stanley*, 484.

21. In passing through long tunnel lights are necessary, and windows, doors and ventilators should be closed. But it does not follow that officer should be provided for every car, or that omission to shut out gas and smoke, would, of itself, give right to passengers to sue for discomfort and annoyance. *Id.*

22. Passenger sitting close to front door of crowded car, when passing through tunnel, attempted to shut door while car was in total darkness in order to keep out smoke and cinders, and was injured. *Held*, that all the facts and circumstances taken together would justify verdict for plaintiff, unless his conduct amounted to contributory negligence, and that court below properly refused to instruct jury that plaintiff was chargeable with contributory negligence. *Id.*

23. Dock owner supplied and put up staging outside of ship in his dock under contract with ship owner. A workman, in employ of ship painter who had contracted with owner to paint outside of ship, in order to do the painting, went on and used the staging, when one of ropes by which it was slung, being unfit for use when supplied by dock owner, broke and workman fell and was injured. *Held*, that dock owner was liable for neglect of reasonable care that ropes were fit for use. *Heaven* v. *Pender*, 74.

24. In action against physicians for falsely certifying to insanity of person who is thereby committed to asylum, where pleadings raise the issue as to sanity at time certificate alleges it, burden of proof is on plaintiff. *Pennell* v. *Cummings*, 74.

25. In such a case the falsehood, and not the insufficiency of certificate is the ground of action; if the physicians have not made inquiry and examination required by statute, or if their evidence and certificate are not sufficient, commitment is fault of municipal officers and not of physicians, provided they have stated facts and opinions truly and have acted with due professional skill and care. *Id.*

26. The Illinois statute which declares that in actions for damages for injury to property "occasioned by fire communicated by any locomotive engine while passing along any railroad," the fire shall be *prima facie* evidence "to charge with negligence" owner or operator of road at time, was intended to charge upon company using locomotive all injuries which are shown to have resulted from fire from passing train, unless company can show that loss was not occasioned by its negligence. *Railroad* v. *Pennell*, 807.

27. Where railway company, through negligence by escape of fire from locomotive, sets fire to depot, from which hotel in vicinity is destroyed, to make company liable to owner of hotel, it is enough if the burning thereof be a consequence so natural and direct from the burning of the depot that a reasonable person might, and naturally would, see that it was *liable* to result therefrom. *Id.*

NEGLIGENCE.

28. Plaintiff cannot hold defendant responsible for injury to which he has contributed or which is caused by some new intervening cause not incident to injury caused by defendant. *Pullman Co.* v. *Bluhm*, 414.

29. In case where plaintiff's arm has been broken from negligent conduct of defendant, and plaintiff exercises ordinary care to keep parts together and in selection of surgeons, doctors and nurses, and employs those of ordinary skill and care in their profession, and still, by some unskilful or negligent act of such surgeon, doctor or nurses, bones fail to unite, defendant will be liable for unfavorable result of injury. *Id.*

30. Young man in vigorous health, strong, active and in full possession of all his faculties, having valise in right hand and basket on left arm, attempted, in broad daylight, to leave train while moving slowly, distance from lower step to platform being eighteen inches, and in doing so was seriously injured. *Held*, that plaintiff was not guilty of such negligence as would justify court in taking case from jury. *Railroad Co.* v. *Maugans*, 415 and 518, *and note.*

31. Local act of legislature affecting city of Providence provided that "every building * * * in which twenty-five or more operatives are employed in any of the stories above the second story, shall be provided with proper and sufficient, strong and durable, metallic fire escapes or stairways, constructed as required by this act, unless exempted therefrom by the inspector of buildings, which shall be kept in good repair by the owner of such building, and no person shall at any time place any incumbrance upon any such fire escapes." Other sections provided remedies as follows: "Any person violating any provision of this act, wherein no penalty is herein otherwise prescribed, shall be fined twenty dollars for every violation thereof, and shall be fined not exceeding twenty dollars for each day's continuance of the said violation after the service of the warrant issued upon the first complaint. The Supreme Court in term time or any justice thereof in vacation, may restrain, by injunction, any violation of this act, and may, according to the course of equity, secure the fulfilment and execution of the provisions thereof." Chief engineer of fire department was charged with executing provisions of act. *Held*, that scheme of act was to secure safe structures as police measure and for general safety; and that it was not scheme of act to create any duty which could be made subject of action by individuals, and that no remedy in favor of individuals beyond what is expressly given in act should be implied for mere neglect to perform duties created by act. *Grant* v. *Slater Co.*, 484.

NEGOTIABLE INSTRUMENT. See BILLS AND NOTES; CONSTITUTIONAL LAW, 9; MUNICIPAL CORPORATION, 10.

Bona fide purchaser of, before maturity, when same is void between original parties, can recover only what he or some prior holder paid for it, with interest. *De Kay* v. *Hackensack*, 551.

NOTICE. See ATTORNEY, 4; BROKER, 2; EXECUTORS AND ADMINISTRATORS, 6; GIFT, 3; HOMESTEAD, 11; INNKEEPER, 3; MASTER AND SERVANT, 4; MORTGAGE, 3; MUNICIPAL CORPORATION, 3; PARTNERSHIP, 7; WAREHOUSE RECEIPT, 2.

1. To constitute, record of deed, &c., must show proper execution and acknowledgment. *Girardin* v. *Lampe*, 151.

2. In ejectment contention was over division line and turned on question whether defendant was chargeable with notice of contents of unrecorded deed when he knew of deed but not of its terms. *Held*, that defendant was put on inquiry. *Hill* v. *Murray*, 622.

NOVATION. See USURY, 2.

NUISANCE. See CONSTITUTIONAL LAW, 3; EASEMENT, 1, 2; MUNICIPAL CORPORATION, 28, 29, 35; NEGLIGENCE. 10.

If effect of dense smoke emitted from smokestack or chimney is detrimental to certain classes of property and business within limits of city, and is personal annoyance to public at large within same, it is a public nuisance, whether so declared by ordinance or not. Unless such is the fact, act of so declaring it will not make it a public nuisance. *Harmon* v. *City*, 808.

OATH. See HIGHWAY, 3, 4.

OFFICER. See CONSTITUTIONAL LAW, 5; DAMAGES, 4; EXECUTION, 2; MUNICIPAL CORPORATION, 5, 13; UNITED STATES COURTS, 1.

1. Partial payment to levying officer in whose hands distress warrant has been placed, discharges defendant *pro tanto*. *White* v. *Mandeville*, 348.

2. Writ of attachment in proper form will protect officer executing it, although affidavit on which it issued was fatally defective. *Matthews* v. *Densmore*, 214.

3. Taking of goods, upon writ of attachment, into custody of marshal, as officer of court that issues writ, is, even when goods are property of third person, an official act, and, if wrongful, a breach of marshal's bond and his sureties are liable. *Lamon* v. *Fensier*, 415.

4. When office is created by constitution, but compensation is left to legislature, it may be increased or diminished so as to affect incumbent, whether it be by fees or salary. *Humphry* v. *Sadler*, 276.

5. Election or appointment to office creates no contract between state and officer, which is protected by clause of Federal Constitution prohibiting impairment of contracts. *Id.*

ORDINANCE. See MUNICIPAL CORPORATION, 5, 6, 11, 12, 36; TAX AND TAXATION, 7.

PARDON. See CONSTITUTIONAL LAW, 11.

PARENT AND CHILD. See CONTRACT, 12.

1. Mother, father being dead, can recover for services of minor son actually living with and supported by her at time of injury; also for care and labor of nursing him and expense and cost of medicines and medical attendance, but not for pain and suffering of her son, or her own anxiety and suffering on his account. *Commissioners* v. *Hamilton*, 75.

2. Plaintiff was injured by frightening of her horse by two boys, who shouted and fired pistols as she passed their father's premises. In action against father, *held*, that it was proper to show that such acts had been previously performed by the boys, sometimes in their father's presence. Not necessary that he should have directed wrongful act by express command. *Hoverson* v. *Noker*, 670, *and note*.

3. Father is entitled to custody of his infant child unless its interests forbid. *Petition of Vetterlein*, 485.

4. In *habeas corpus* by father for custody of infant, to which mother made return showing decree of divorce granted in 1877, on her petition in Indiana, and giving her custody of child: *Query*, whether decree, so far as it affected custody of child, had any force outside of jurisdiction where made. *Id*

5. But it appearing that proceedings for divorce were irregular and void, that child had for 8 years been kept under its mother's influence, and in ignorance of its father, and that its nurture and education would be as well cared for by father as by mother: *held*, that father should have custody of child, mother to have access to it at all reasonable times. *Id.*

PARTICULAR WORDS AND PHRASES.

"Executed." *Nicholson* v. *Coombs*, 193.

PARTITION. See SHERIFF, 5.

Cannot be had of lands held adversely, or to which title is in dispute, unless vacant. Where co tenant has been ousted or his rights totally denied by his co-tenant, his remedy is by ejectment, in which he may recover his just proportion of land and of rents and profits. *London* v. *Overly*, 276.

PARTNERSHIP. See ACTION, 4; ASSIGNMENT, 1; ATTACHMENT, 5; BILLS AND NOTES, 18; CORPORATION, 11; EQUITY, 20; HUSBAND AND WIFE, 11; LIMITATIONS, STATUTE OF, 3; SPECIFIC PERFORMANCE, 4; WILL, 12–17.

1. Bill in equity may be maintained by administrator of deceased partner against survivor, for sale of letters patent belonging to partnership, and for an account of profits from its use. *Freeman* v. *Freeman*, 684.

2. One partner cannot bind his co-partner by signing instrument under seal

PARTNERSHIP.
in firm name, unless such act has been previously authorized or is subsequently confirmed: such authority or confirmation may be shown by parol or by circumstances. *Herzog* v. *Sawyer*, 551.

3. One of several partners, without consent of others when they cannot be consulted, can assign firm property to pay firm debts, if, being in charge of property, be acts in good faith to meet business crisis. *Petition of Daniels*, 683.

4. Where actual delivery of goods cannot be made symbolical delivery suffices; and where assignee of property, part of which was attached, took possession of that not attached and demanded that attached. *Held*, that he had done all that was necessary to perfect his title. *Id.*

5. Sale by one of two partners of his partnership interest to his successor in firm, does not destroy priority of right of creditor of original firm to payment out of partnership property of original firm to extent of the other original partner's interest therein. *Spurr* v. *Russell*, 276.

6. If holder of firm note after dissolution accepts note of one of partners, payable at future day, retaining interest for said time by discount, and agrees to release other partner, no action on firm note can be maintained. Such agreement may be implied. *Bank* v. *Green*, 214.

7. Where partners have dealt as such with seller, and after becoming incorporated continue to deal as before, having their bills made in same way, without giving notice, they will continue liable as partners, unless seller have actual knowledge of change. *Martin* v. *Fewell*, 684.

8. Permanent improvements erected upon real estate owned by one partner, will, notwithstanding real estate is used as place of business of firm, be presumed to be individual property of partner until contrary is proven. *Goepper* v. *Kinsinger*, 75.

9. Unless the partner is estopped from denying the ownership of firm by his conduct or representations to creditors, their right to subject such property to payment of partnership, in preference to individual debts, must depend upon right of partners as between themselves; and where all the facts proved are consistent with the *use* alone having been contributed to firm, that view should be adopted. *Id.*

10. Person who is not partner cannot be held liable by reason of having held himself out as such, by one who had no knowledge or belief of such holding out. There may be cases, however, in which holding out has been so public and long continued that jury may infer reliance upon it. *Thompson* v. *Bank*, 485.

11. Ordinarily, partners in non-trading firm (*e. g.* insurance, real estate and collecting) have no implied power to bind each other by commercial paper executed in firm name. *Deardorf* v. *Thatcher*, 485.

12. Plaintiffs, at St. Louis, sent reaper to C., K. & Co., at Sullivan, Missouri. C., K. & Co. afterwards reported by letter that they had sold reaper to K., member of firm, and sent firm's note for price. It turned out that K. had made transaction and written letter wholly without knowledge of other members of firm, and had also gotten the benefit, but it also appeared that they habitually left management of business to K., and permitted him, whenever he wanted goods, to take them and charge them to himself. *Held*, that they were liable. *Hayner* v. *Crow*, 684.

13. One member of defendant firm promised to pay debt due plaintiff from certain marble company. Firm owned one-fourth of company's stock, controlled its financial operations until it became hopelessly involved, and consideration of promise was forbearance to attach its property. Partner making promise managed firm's business; all his operations and negotiations indicated purpose to absorb and get title to property of company; and this purpose was accomplished. It did not appear but that the transactions were within scope of partnership. *Held*, that receipt of benefit in obtaining title to and possession of property by firm were ratification of all acts done in obtaining it. *Lynch* v. *Flint*, 551.

14. C. and M., partners, held lease of certain premises for ninety-nine years, renewable forever, with covenants for payment of rent, taxes and assessments. Partnership was dissolved, and C. conveyed to M. his undivided interest in

PARTNERSHIP.
leasehold. Assignee of reversion brought suit on covenants for rent against C. and M. jointly, for arrears accrued after dissolution. Pending suit, M. being in default of answer, C. filed answer denying all liability, but afterwards paid to assignee of reversion $500, who discharged him from all liability growing out of lease. *Held*, there is not such presumption that above-named sum was paid on accrued rent, and not in discharge of future contingent liability on lease, as would entitle C. to recover such sum of M. as money paid for and on his account upon implied promise to reimburse C. therefor. *McHenry* v. *Carson*, 622.
15. POWER OF PARTNERS TO WITHDRAW AT WILL FROM PARTNERSHIPS ENTERED INTO FOR A DEFINITE PERIOD.

PARTY-WALL. See CONTRACT, 8, 24.
Owners of, not tenants in common, but each owns in severalty so much as stands on his own lot, subject to easement of other. And owner on one side may, within limits of his own lot, increase thickness, length or height of wall, if he can do so without injury to adjoining building. *Andrae* v. *Haseltine*, 151.

PATENTS. See EQUITY, 19; PARTNERSHIP, 1; SPECIFIC PERFORMANCE, 3; TRADEMARK, 3, 4.
1. Discretion of commissioner of patents in issuing, not subject to review by secretary of interior. *Butterworth* v. *United States*, 808.
2. Purchaser of patented articles from territorial assignee, does not acquire right to sell articles in course of trade outside of territory granted to vendor. *Hatch* v. *Adams*, 794.
3. License for term of years will terminate upon death of licensee within the period, in absence of express words showing an intent to extend the right to executor, administrator or assignee. *Oliver* v. *Chemical Works*, 75.
4. When patentee has applied for re-issue, making affidavit that he believes that by reason of insufficient or defective specification original letters-patent are void, and re-issue is obtained, which is void because too broad, original letters cannot be revived by disclaimer of all changes, but only, if at all, by surrender of re-issue and grant of another re-issue. *McMurray* v. *Mallory*, 416.
5. As general rule patentee is not entitled to interest on profits made by infringer, but where case was sent back to master to make certain deductions from damages. *Held*, that plaintiff was entitled to interest on corrected amounts from date of master's last report. *Railroad Co.* v. *Turrill*. 276.
6. Suits and right of suit for infringement of patent survive to patentee's legal representatives. *Id.*
7. By terms of license royalties, payable monthly, were, if paid by given day of each month, subject to reduction of sixty per cent. "until such time as a decision of the United States Circuit Court" might be had sustaining patent; afterwards of only twenty-five per cent. *Held*, that decree *pro confesso*—upon failure to plead, answer or demur—and reference to master to ascertain profits and damages, was not decision contemplated. *Heater Co.* v. *Stove Co.*, 751.

PAYMENT. See BILLS AND NOTES, 13; INSURANCE, 6; LIMITATIONS, STATUTE OF, 7; OFFICER, 1.
1. Satisfaction of debt made by stranger for or on account of debtor and adopted by debtor, is valid satisfaction. Debtor need not formally adopt such satisfaction before availing himself of it by plea, plea being an adoption. *Bennett* v. *Hill*, 622.
2. A. being indebted to C., agreement was made between B. and C. by which A. and B. were to carry on business formerly owned by C.; and B. was from profits to pay C. debt due from A., while C. was to accept agreement in lieu of his claim against A. *Held*, that agreement discharged A. from C.'s claim, and that discharge of C.'s claim was sufficient consideration for agreement and for B.'s promise. *Id.*

PENALTY. See ABATEMENT; CONTRACT, 17; CORPORATION, 9.

PERJURY. See MALICIOUS PROSECUTION, 4, 5.

PHYSICIAN. See CONSTITUTIONAL LAW, 20; CONTRACT, 3; NEGLIGENCE, 24, 25.

PLEADING. See BILLS AND NOTES, 7; COVENANT, 1; DURESS, 3.

1. Default after due service of summons admits only allegations of complaint. *Chaffin* v. *McFadden*, 348.

2. In slander defendant may set up: First, that he did not use the language; and, second, that it is true. *Cole* v. *Woodson*, 552.

3. Petition counted upon two distinct wrongful acts as causes of killing of horses: First, neglect to keep in repair a fence as required by contract; and, second, negligence in running train. *Held*, that plaintiff could not be required to elect upon which he would rely, that doctrine applying where one wrongful act is charged, and plaintiff is entitled to treat it as having either of two natures. Of course he cannot recover double damages. *Railway Co.* v. *Hedges*, 623.

PLEDGE. See BROKER, 2; CORPORATION, 8; NATIONAL BANK.

POSSESSION. See DEED, 7.

POWER. See HUSBAND AND WIFE, 17.

PRACTICE. See CORPORATION, 15, 16; CRIMINAL LAW, 9; EQUITY, 3; ERRORS AND APPEALS, 8; JUDGMENT, 2.

1. Where cause in court for trial of small causes has been adjourned to particular time and place, and justice fails to attend, but, at another place, in absence of parties and without consent of defendant, adjourns cause to another day, he cannot on that day proceed to trial and judgment, although notice of adjournment has been given defendant; such adjournment operates as discontinuance of suit. *State* v. *Board of Health*, 623.

2. Where act provides that summons must be served by delivering copy with endorsements duly certified to defendant, or leaving same at his residence: *Held*, that return "served on the second day of January 1861, by reading," shows want of service; and judgment by default thereon is nullity and may be attacked collaterally. *Robins* v. *Clemmings*, 752.

3. Although township in Kansas fails, neglects and refuses to elect or permit or allow its trustee, clerk or treasurer to qualify or to designate some person upon whom service of legal process can be made, it cannot be brought into court upon service by publication, as it does not thereby, within terms of statute, conceal itself. *Rockway* v. *Oswego*, 552.

4. Absence of counsel not favored as ground of continuance. Where one of counsel representing defendant was engaged in attendance upon U. S. Circuit Court, and the other was suddenly summoned to attend Supreme Court to argue case from circuit other than that in which he resided, and voluntarily left without leave or application for delay, this furnished no ground for continuance. *Ins. Co* v. *Edwards*, 808.

PRESUMPTION. See BILLS AND NOTES, 27; COMMON CARRIER, 3; CONTRACT, 10, 12; CRIMINAL LAW, 17; DEBTOR AND CREDITOR, 3, 4; DEED, 4, 5; EJECTMENT, 3; HUSBAND AND WIFE, 9; MASTER AND SERVANT, 16; PARTNERSHIP, 8, 14; RAILROAD, 4; TAX AND TAXATION, 7.

1. Is that note produced from among deceased debtor's effects by administrator has been paid. *Liddell* v. *Wright*, 348.

2. Death presumed after seven years' absence: something more than similarity of name necessary to overcome presumption; identity of person must be proved. *Hoyt* v. *Newbold*, 151.

PROHIBITION.

1. Writ of, cannot be used as substitute for appeal. *Ex parte Pennsylvania*, 76.

2. Congress alone has power to determine whether judgment of U. S. Court, of competent jurisdiction shall be reviewed. *Id.*

PUBLIC POLICY. See COMMON CARRIER, 7; CONTRACT, 3; CORPORATION, 5; LIMITATIONS, STATUTE OF, 1; MASTER AND SERVANT, 8.

PUBLIC POLICY.

1. Agreement for location of route of railroad at particular intermediate place not *per se* void as against public policy. *Railroad Co.* v. *Ralston*, 416.

2. Pooling agreement made by all tobacco warehousemen of large city, fixing prices, &c., restricting freedom of parties to it, and providing for forfeitures for breaches of it, is void. *Hoffman* v. *Brooks*, 648, *and note.*

3. Agreement between several that one shall bid at public sale or letting of contract and shall share profits, is voidable, if either intention, effect or necessary tendency of combination be to stifle or limit competition. *Woodruff* v. *Berry*, 276.

QUO WARRANTO. See MUNICIPAL CORPORATION, 17.

1. Use of in case of intrusion into office of public nature, as that of keeper of jail. *State* v. *Meehan*, 214.

2. Granting or withholding leave to file information in nature of, at instance of private relator, to test right to an office, rests in sound discretion of court, even though there be substantial defect in title by which office is held. *State* v. *Mead*, 623.

RAILROAD. See AGENT, 4, 6; COMMON CARRIER; CONSTITUTIONAL LAW, 4, 15, 31, 33; CONTRACT, 11; EVIDENCE, 4; INJUNCTION, 4; INSURANCE, 2; INTERNATIONAL LAW, 1; MASTER AND SERVANT, 1–3, 6, 8, 11, 14, 15, 17; MUNICIPAL CORPORATION, 18; NEGLIGENCE, 3, 8, 14, 15, 17, 20–22, 26, 27, 30; PUBLIC POLICY, 1; TAX AND TAXATION, 1.

1. Liable for injury caused by defect in derrick obviously existing at time of delivery, furnished by agreement to contractor, where person injured was not servant of corporation or contractor. *Conlon* v. *Railroad Co.*, 277.

2. Passenger on drover's pass has same rights, and is under same obligations as if he had bought his ticket. *Railway* v. *Miles*, 277.

3. Station agent has no implied authority to direct passenger where to ride, and if, by his direction, cattle drover ride upon top of cattle car and sustain injury in consequence, he cannot recover unless he proves express authority to agent to give such directions. *Id.*

4. When two companies are authorized to consolidate, it is to be presumed that franchises and privileges of each continue to exist in respect to the several roads so consolidated. *County* v. *Conners*, 76.

5. Road master whose duty it is to direct repairs and keep road in safe condition, is, in line of his duty, representative of company. *Railroad* v. *Moore*, 348.

6. Where such road master is culpably negligent, company, even under common-law rule, is liable for damages resulting therefrom to one of its other servants. *Id.*

7. Person purchasing ticket which has been fraudulently obtained from company, from holder, for value and without notice, acquires no title. *Frank* v. *Ingalls*, 752.

8. Agent authorized to sell tickets and stamp and deliver same upon receiving pay therefor, cannot bind company by stamping and delivering such tickets to third person to be sold by him, and to be paid for when sold. *Id.*

9. Company left loaded car, coupled with two empty cars, standing on switch which inclined toward main track, same being secured by brakes and railroad tie under wheels of loaded car; car got upon main track and accident occurred. *Held*, company was not irresponsible as matter of law, even though cars could not have got on main track but for wrongful act of stranger. *Smith* v. *Railroad Co.*, 623.

10. Proof that certain promoters of road guaranteed that route would pass near certain land, and of deviation from such line, insufficient to discharge subscriber who had subscribed in reliance on such statement, there being no evidence of fraudulent intent. *Braddock* v. *Railroad*, 151.

11. Right of way through city was granted to railroad by ordinance requiring it to build suitable fence "of such height as the common council may direct." *Held*, that obligation to build fence was absolute, and that right reserved to council was only to give specific directions if it saw proper. *Hayes* v. *Railroad.* 416.

RAILROAD.

12. Plaintiff's horse escaped from his adjoining meadow directly on to track, and was killed by train. Defendant had neglected to maintain lawful fence. *Held*, that company was liable, although owner knew of defect in fence, that his horse was breachy, and although there was no neglect in running train. Doctrine of contributory negligence not applicable. *Congdon* v. *Railroad Co.*, 752. See NEGLIGENCE, 13.

13. Where employee rightfully engaged in repair of employer's freight car, calls upon his son, under eleven years of age, to render him necessary temporary assistance, and son while so assisting, without negligence on his part or his fathers, is injured through negligence of agents and servants of another company in backing train of cars, latter company is liable in action by son. *Penna. Co.* v. *Gallagher*, 348.

14. DISCRIMINATION IN RAILWAY FACILITIES, 417.

15. STATE LEGISLATION REGULATING RAILROAD TRAFFIC, 81. See also LEGAL NOTES, 473.

RATIFICATION. See ARBITRATION, 4; PARTNERSHIP, 2, 13.

REAL ESTATE. See COVENANT, 3; EJECTMENT, 4, 5; EQUITY, 16; NEGLIGENCE, 10.

Where property is leased to which the title is inchoate, a subsequent conveyance to lessor will at once enure to benefit of lessee. *Skidmore* v. *Railway Co.*, 808.

RECEIVER. See CONFLICT OF LAWS, 1.

1. Foreign, as against domestic creditors, cannot remove debtor's assets from state. *Railway Co.* v. *Packet Co.*, 277.

2. But where he has obtained rightful possession of personal property situate within the jurisdiction of his appointment, he will not be deprived of its possession though taken by him, in performance of his duty, into foreign jurisdiction. *Id.*

3. A corporation, may be sued for tort committed by corporation before his appointment. Judgment, if for plaintiff, will be against him, as receiver, and is leviable out of assets in his hands. *Combs* v. *Smith*, 486.

4. Court may authorize receiver of railroad to issue certificates of indebtedness and make them first lien upon road to raise funds to make necessary repairs and improvements, but power is to be sparingly exercised. *Credit Co.* v. *Railroad Co.*, 35, *and note.*

5. Discharge of receiver by court and restoration of property to corporation, *without* reservation of jurisdiction as to existing rights of action, discharges both receiver and property from liability to suit for injuries inflicted through negligence of employees of road. *Davis* v. *Duncan*, 582, *and note.*

6. After such order has been complied with court cannot, after adjournment of term at which order was made, alter it, so as to again obtain jurisdiction over property and funds. And that receiver was also president of corporation can make no difference. *Id.*

7. Neither receiver, personally, nor corporation liable for torts of receiver's employees: proceedings against receiver for such torts in nature of proceedings *in rem* *Id.*

8. Although permission has been granted to sue receiver, receiver can set up any defence by plea, answer or demurrer. *Id.*

9. Who may be receivers. *Id.*, *note*, 589

REDEMPTION. See MORTGAGE, 12.

RELEASE. See SURETY, 7.

RELIGIOUS SOCIETY. See CORPORATION, 3.

REMOVAL OF CAUSES. See CORPORATION, 18.

1. Bill of interpleader, by citizen of one state against two citizens of another, cannot be removed, on petition of one of defendants, to U. S. Circuit Court, under Stat. of March 3d 1875, § 2. *Ins. Co.* v. *Allen*, 76.

2. If interests of parties are so identified that they must or should be decided together, cause cannot be removed to United States Court if any one of parties

REMOVAL OF CAUSES.
on one side is citizen of same state with opposite party. *Wilson* v. *Railroad Co.*, 724, *and note.*

3. Railroad company, incorporated in several states through which it runs is citizen of each state, and cannot remove cause to Federal courts on ground of its citizenship in other states. *Horne* v. *Railroad Co.*, 102, *and note.*

4. Can state court inquire into facts and judicially determine whether case is removable? *Id.*, *note.*

5. Is order granting or refusing removal, appealable? *Id.*, *note.*

6. Before jurisdiction of state court in criminal prosecution will cease, jurisdiction of U. S. Court must attach; and where case was never duly removed, and was dismissed from U. S. Court for want of jurisdiction, forfeiture of recognisance for non-appearance in state court would be good, otherwise not. *Hunter* v. *Colquit*, 348.

7. The limitation upon suits on contracts to be *commenced* by assignees in U. S. Circuit Courts (confining them to cases which might have been prosecuted there, if no assignment had been made, except as to bills and notes) contained in sect. 1, ch. 137, Act of March 3, 1875, does not apply to *removal* of suits under sect. 2. *Claflin* v. *Ins. Co.*, 349.

REPLEVIN. See CORPORATION, 1; UNITED STATES COURTS, 1.

1. Defendant in, cannot lawfully retake replevied property from plaintiff on another writ of replevin. *Bonney* v. *Smith*, 277.

2. That defendant in, himself replevied the goods from third person, does not affect plaintiff's right. *Kelleher* v. *Clark*, 214.

3. Possession obtained by plaintiff in, who claims special ownership, vests in him title he claims, and as against general owner, bond takes place of property to extent not exceeding interest claimed by plaintiff. *Luyerbeel* v. *Lemert*, 215.

RESCISSION. See INSURANCE, 1; SALE, 2.

SALE. See DEBTOR AND CREDITOR, 6; PATENT, 2.

1. No delivery of personal property named in formal bill of sale is necessary to pass title, as between the parties. *Philbrook* v. *Eaton*, 76.

2. Prior agreement for purchase of goods is not *ipso facto* revoked by buyer's insolvency or his assignment for benefit of creditors. Seller may stop goods *in transitu*, but if he does not, title passes on delivery. *McElroy* v. *Seery*, 552.

3. Where W. contracted to sell T. safe in possession of L., and that L. shall deliver same to T., and T. agrees to pay $15 upon delivery, on absolute refusal by L. to deliver, T. may, without tender of $15, commence action against W. *Thompson* v. *Warner*, 349.

4. If A., fraudulently assuming name of reputable merchant in certain town, buy goods in person, the property therein passes to A., and seller cannot maintain action against common carrier for delivery to A. Otherwise where A. represents himself to be brother of reputable merchant and buying for him. *Edmunds* v. *Trans. Co.*, 277.

5. S. S. & Co. sold and delivered threshing-machine to K. upon conditions: 1. That title, ownership or possession of machine should not pass from them to K. until notes given for price should be paid in full. 2. That sellers should have power to declare notes, so given, due at any time, they should deem debt insecure, and to sell machine at public or private sale and apply proceeds upon unpaid balance of purchase price. *Held*, that first condition was valid, and that second condition did not divest sellers of right of property reserved in first condition. *Call* v. *Seymour*, 416.

SAVINGS BANK. See CORPORATION, 2.

Treasurer of, has no implied authority to assign mortgage belonging to: that by verbal consent and under direction of investment committee, he had assigned other mortgages relating to other estates, not sufficient to give him general authority to assign or justify the inference that he had such authority. *Holden* v. *Phelps*, 215.

SEAL. See CONTRACT, 16, 20; MUNICIPAL CORPORATION, 25; PARTNERSHIP, 2.

SEQUESTRATION. See EQUITY, 10, 11.

SET-OFF. See ATTACHMENT, 5; ATTORNEY, 4; BILLS AND NOTES, 22; CORPORATION, 6, 12; MORTGAGE, 6.

SHERIFF.

1. On motion to amerce sheriff for neglecting to levy *fi fa.*, value of property need not be shown with precision. *White* v. *Rockafeller*, 151.

2. Under Missouri statute officer to whom execution is delivered, in case of false return, is liable for whole amount directed to be levied. In such an action, where falsity consisted in stating that writ was ordered to be returned satisfied by plaintiff's attorneys, an amendment by leave of court striking out false statement, *held*, no defence. *State* v. *Case*, 151.

3. Plea of insolvency of defendant in the execution, no defence in such an action. *Id.*

4. Where no damages are proven, sheriff not liable even for nominal damages, for failure to return execution at time fixed. *Id.*

5. Liable for failure to deliver to proper parties money paid him for note and mortgage taken for purchase-money of land sold on partition, though no special order of distribution thereof had been made, and money was paid after expiration of his term of office. Such liability not discharged by paying money to attorney who procured the sale. *Calvin* v. *Bruen*, 215.

SLANDER AND LIBEL. See INJUNCTION, 6, 7; PLEADING, 2.

1. Communication made to public prosecutor absolutely privileged. *Vogel* v. *Gruaz*, 273.

2. Article circulated in good faith by elector among voters relating to character of candidates for public office, privileged. *State* v. *Balch*, 345.

3. In action for slander for words imputing crime of horse stealing, where truth of alleged defamatory words is pleaded, it is not necessary to prove it beyond a reasonable doubt. *Bell* v. *McGinness*, 76.

4. In action against counsel for defamatory words spoken, questions of malice, *bona fides* and relevancy cannot be raised; only question is, whether what is complained of has been said in course of administration of law. *Munster* v. *Lamb*, 12, *and note.*

5. Privileged communications. *Id.*, *note.*

6. If person accused by employer of stealing money, informs friend of accusation and seeks his advice, and latter has interview with employer, in which he informs him of grounds of charge, and during which accused comes in and begins conversation with employer, referring to charge, whereupon employer repeats accusation the third person still being present, occasion renders words privileged. *Billings* v. *Fairbanks*, 549.

7. At trial of indictment for libel against publisher of newspaper, who offers evidence of truth of statements, other publications in same paper, if they tend to show general ill-will towards person alleged to have been libelled, and are of such nature as to indicate persistent disposition of hatred towards him, or if they appear to be part of settled purpose to bring him into public hatred, contempt or ridicule, and are sufficiently near in time to afford natural inference that same state of mind existed when alleged libellous publication was made, are admissible, although published after alleged libel and not expressly referring to it. *Commonwealth* v. *Damon*, 682.

8. At such trial if truth of statements is established, government must show that defendant, in legal sense, actually participated in or authorized publication, and with actual malicious intention. *Id.*

SLEEPING CAR COMPANY.

Does not incur towards passenger liability of inn-keeper or common carrier, but impliedly undertakes to keep reasonable watch over him and his property: he must therefore not only show his loss but also company's negligence. *Pullman Co.* v *Gaylord*, 788.

SPECIFIC PERFORMANCE. See COVENANT, 3; EQUITY, 16, 17.

1. Part performance of parol contract for sale of land must be in life of vendor to bind his infant heirs. *Shirey* v. *Cumberhouse*, 349.

2. Laches not available as defence to bill for, of agreement to convey land, where complainant has been in continued possession. *Whitsitt* v. *Trustees*, 618.

3. May be decreed of contract for assignment of interest in patent. *Satterthwait* v. *Marshall*, 278.

4. Agreement for future execution of formal articles of copartnership will be enforced in equity, although after they are executed court cannot compel parties to act under them. *Id.*

5. Foreign construction company cannot maintain bill in equity in Massachusetts against foreign railroad corporation and citizen of that state, to enforce specific performance of contract to deliver bonds and stock certificates in payment of work to be performed by construction company in foreign state, and to restrain by injunction citizen of Massachusetts from disposing there of stock and bonds alleged to have been delivered to him in violation of plaintiff's rights, although railroad corporation has office in Massachusetts for transfer of stock and has appeared by attorney. *Railroad Cons. Co.* v. *Railroad Co.*, 216.

STATUTE. See CONSTITUTIONAL LAW, 15, 20, 21, 22, 23; CONTRACT, 28; CORPORATION, 19; COURTS, 3; EVIDENCE, 5, 6; HUSBAND AND WIFE, 2, 3; MUNICIPAL CORPORATION, 2; NEGLIGENCE, 31.

1. In absence of proof act of legislature is presumed to take effect from first moment of day of its passage. *Arrowsmith* v. *Hormening*, 249, *and note.*

2. Rule that law never regards fraction of day not applied where it would work injustice; but where an act has exception in favor of pending actions, it is incumbent on party bringing action commenced on same day, to prove exact time at which act was passed. *Id.*

3. Repeals by implication not favored. To produce such result, either the two acts must be upon same subject, and there must be plain repugnancy between their provisions; in which case, to extent of repugnancy, later act repeals former; or later act must cover whole subject of first and embrace new provisons plainly showing it was intended as substitute for first. *Coats* v. *Hill*, 349.

STOCK. See BANK, 2; CONTRACT, 22; CORPORATION, 1, 5, 15, 16, 20, 21; DEBTOR AND CREDITOR, 1, 2; NATIONAL BANK; RAILROAD, 10.

STOPPAGE IN TRANSITU. See SALE, 2.

STREET. See CONSTITUTIONAL LAW, 31, 33; MUNICIPAL CORPORATION, 1, 30, 38; TAX AND TAXATION, 7.

1. Owner of land adjacent to, in city, not liable for injury resulting from unsafe or dangerous condition of land, where person left street and went upon same without knowledge of or inducement from owner or occupant. *Kelly* v. *City*, 624.

2. Fact that pavement was continuous from sidewalk over adjacent land to place of danger, was not, of itself, implied invitation to go upon adjacent lands. *Id.*

SUBROGATION.

If party purchasing land subject to mortgage, contracts with mortgagor to pay same, and afterwards mortgagor is compelled to pay it himself, he will be subrogated to rights of mortgagee as against such purchaser and any one claiming under him with notice. *Orrick* v. *Durham*, 684.

SUICIDE. See INSURANCE, 3.

SUNDAY. See CRIMINAL LAW, 7; LIMITATIONS, STATUTE OF, 1.

If last day of statutory period for redemption of land falls on Sunday, tender on following day is too late. *Haley* v. *Young*, 76.

SUPERSEDEAS. See ERRORS AND APPEALS, 7.

SURETY. See BILLS AND NOTES, 6; EXECUTION, 1; FRAUDS, STATUTE OF, 7; HUSBAND AND WIFE, 9; OFFICER, 3.

1. Where third person (as wife of principal) exclusively indemnifies one of several sureties, the others are not entitled to share therein. *Leggett* v. *McClelland*, 216.

2. Cashier's surety not discharged by fact that cashier was defaulter at time bond was given, or neglect of bank to ascertain that fact. *Bowne* v. *Bank*, 152.

3. Rule that contract pf surety is to be construed strictly, applies only to contract itself, and not to matters collateral and incidental, or which arise in execution of it. *Warren* v. *Ins. Co.*, 152.

4. If, after creditor has given time to principal, surety, with full knowledge of facts, promises to pay if principal does not, he is liable without any new consideration. *Bramble* v. *Ward*, 77.

5. When answer of surety sets up that, without his knowledge or consent, extension of time was given to principal, he must make this appear by preponderance of evidence. *Id.*

6. Agent having, by culpable carelessness, lost money collected by him, was required to give bond or leave. Principal did not inform sureties of agent's former carelessness and they had no knowledge thereof. *Held*, that principal could not recover. *Smith* v. *Joselyn*, 77.

7. Where sureties contract *severally*, creditor does not break contract with one by releasing another. *Ward* v. *Bank*, 77.

8. Creditor not bound to active diligence against principal even upon request of surety. Equity only interferes with creditor's election between his double remedy against principal and surety, on special grounds; as when principal becomes bankrupt, creditor may be compelled to prove his debt; or where creditor holds collateral not available to surety on assignment. *Wilds* v. *Attix*, 278.

9. Plaintiff and defendant were co-sureties on promissory note. All parties to same were residents of Vermont. After Statute of Limitations became bar there, plaintiff voluntarily and without knowledge of defendant, but with no fraudulent intent, went to New Hampshire, where there was no defence to note, and there was sued by payee, judgment obtained against him, and he was compelled to pay. *Held*, in action for contribution, that payment was compulsory, and that defendant was liable. *Aldrich* v. *Aldrich*, 624.

10. In action against sureties upon bond, given to bank, conditioned for faithful discharge by C. of "all his duties as clerk," and against misappropriation of funds "which may come under the care or control of said C. as clerk," evidence showed that C., during whole term of his employment, performed duty to some extent usually performed by teller. It was found, as fact, that "the duties as clerk," contemplated in bond, did not mean merely duties as bookkeeper, but embraced duties of receiving and paying out money at counter of bank. *Held*, that defendants were not entitled to ruling, as matter of law, that there had been such change in duties of clerk as to discharge them from liability. *Bank* v. *Carlton*, 685.

11. Payee of promissory note, given as collateral for liability as endorser of another note made by same person, may sue maker thereon, although payment of other note has not been enforced. *Hapgood* v. *Wellington*, 685.

TAX AND TAXATION. See DEED, 6; EJECTMENT, 1; ERRORS AND APPEALS, 3; INJUNCTION, 3; MUNICIPAL CORPORATION, 30, 37.

1. Rolling stock belonging to corporation of one state and used upon roads leased to it in another state, is personal property, and not taxable under general statutes of latter state imposing taxes on railroad property. *Railroad Co.* v. *Allen*, 739.

2. Equity will only restrain collection of tax when unauthorized by law, or assessed upon property not subject to taxation, or where assessment or levy has been made without legal authority, or fraud has occurred. *Railway Co.* v. *Johnson*, 216.

3. Strictly an assessment differs from a tax in being confined to local impositions upon property for payment of cost of public improvements in its immedi-

TAX AND TAXATION.
ate vicinity, and levied with reference to special benefits to property assessed. *City* v. *Association*, 350.

4. Municipal corporation insisting on right to impose assessment, should be able to show that such power has been clearly granted by statute; but authority being shown, in general terms, to make assessment, whoever insists on exemption must support his claim by provision equally clear. *Id.*

5. Incorporated cemetery association not relieved from assessment for street improvement by statutory exemption from *taxation*. *Id.*

6. While lands of such association, so far as exempted, cannot be sold to pay such assessment, municipal corporation may enforce same by such remedies as statute and courts of equity afford. *Id.*

7. If ordinance providing for opening or improving street declares in terms that improvement is for *general public benefit or convenience*, without anything more, it will be presumed that ordinance was enacted with exclusive reference to general public convenience, and cost should be borne exclusively from public treasury. But if ordinance be silent upon subject of interests or benefits to be subserved, presumption will be that it contemplated local benefits as well as general public convenience. *Mayor* v. *Hanson*, 552.

TELEGRAPH. See CONSTITUTIONAL LAW, 28, 29.

1. Companies not insurers, but they do undertake for ordinary care and vigilance: and when it is proved that agent received message and failed to deliver it, and there is no proof to account for or excuse the negligence, it may be assumed to have been intentional or gross disregard of duty. *Telegraph Co.* v. *Davis*, 350.

2. LIABILITY OF TELEGRAPH COMPANIES FOR FRAUD, ACCIDENT, DELAY AND MISTAKES IN THE TRANSMISSION AND DELIVERY OF MESSAGES, 281, 353.

TENANTS IN COMMON. See HOMESTEAD, 1; PARTITION; PARTY WALL.

TENDER. See CONSTITUTIONAL LAW, 1; SALE, 3.

TIME. See CONSTITUTIONAL LAW, 2; INFANT, 3; STATUTE, 1, 2; SUNDAY.

TITLE. See EJECTMENT.

TORT. See DAMAGES, 3; EQUITY, 22; FRAUD, 2.

TRADE. See CONTRACT, 3.

TRADEMARK. See EQUITY, 2.

1. A. made and sold "Morse's Syrup of Yellow Dock Root." B. sold preparation in bottles having words, "Dr. Morse's Celebrated Syrup," blown in glass, and resembling perfectly A.'s bottles in size and shape. Labels used were different and A.'s bottles were wrapped in paper cover, B.'s not. *Held*, that A. was entitled to injunction, and account of profits derived from use of bottles similar to his. *Alexander* v. *Morse*, 685.

2. A. made his preparation under one trade name and sold it under another. He also advertised it as "sold only in quart bottles," while his bottles, though known among druggists as quart bottles, held substantially less than quart. *Held*, immaterial. *Id.*

3. Where patented machine becomes known to public by distinctive name during existence of patent, any one at expiration of patent may make and vend such machines, and use such name; and no one by incorporating such name into his trademark, can take away from public right of so using it. *Brill* v. *Singer Co.*, 624.

4. Where machines, during life of patent, become known and identified in the trade by mechanism, shape, external appearance or ornamentation, patentee, after expiration of patent, cannot prevent others from using same modes of identification, in machines of same kind. *Id.*

TRESPASS. See MASTER AND SERVANT, 11; NEGLIGENCE, 12.

TRIAL. See EVIDENCE, 21.

After evidence had closed, arguments been completed, and jury been charged and retired, court took recess until next morning, at same time remarking he would receive verdict any time before 11 P. M. Jury not agreeing, judge, be-

TRIAL

fore hour mentioned, in absence of one party and their counsel and without their consent, had jury brought into court room and delivered another charge on main points in case. *Held*, error. *Bryant* v. *Simmons*, 685.

TROVER.

1. Is not maintainable by owner of house against owner of the land who refuses to employ any tenant of house. *Heywood* v. *Tillson*, 77.

2. Employer has right to refuse to employ tenant of certain premises without subjecting himself to action by owner, though done through malice or ill-will to such owner. *Id.*

3. Refusal to deliver another's chattel to owner on demand ordinarily *prima facie* evidence of conversion. *Singer Co.* v. *King*, 686.

4. Bailee receiving chattel in good faith from one not owner may refuse to deliver it to owner till he has had time to ascertain ownership. *Id.*

5. Servant receiving chattel from master may retain it till he has consulted his master, but if after consultation he relies on his master's title and refuses to deliver it, he is guilty of conversion. *Id.*

6. Agent received chattel from fellow employee, and under prior instructions from principal refused to deliver it to demanding owner until storage had been paid. Claim for storage was untenable. *Held*, that agent was guilty of conversion. *Id.*

TRUST AND TRUSTEE. See CHARITY; EXECUTORS AND ADMINISTRATORS, 5; GIFT, 4; HUSBAND AND WIFE, 5, 13; LIMITATIONS, STATUTE OF, 13; MORTGAGE, 14; VENDOR AND VENDEE, 2; WILL, 16.

1. Confidential agent privately obtaining lease of theatre held at the time on a lease by his principal, and which lease his principal desired to renew, as he was aware, held in equity a trustee for his principal as to same. *Davis* v. *Hamlin*, 207.

2. In absence of fraud beneficiaries in railway mortgages are bound by what is done by their trustees: and this is so where in suit by trustee court has decreed foreclosure for full amount of mortgage debt without necessary consent of holders of one-third in amount of bonds. *Credit Co.* v. *Railroad Co.*, 35, *and note.*

3. When property of railroad company is sold under foreclosure and all persons are authorized to bid, its purchase by president of company in his individual right will not entitle holder of bonds of company to treat him as trustee. *Id.*

4. One claiming right to avoid purchase made by another at judicial sale, or of treating purchaser as trustee cannot delay assertion of this right in order to see whether its assertion would benefit him. *Id.*

5. Testator gave to wife all his real and personal estate "to her sole use, benefit and disposal;" and provided that "whatever may be left of my estate, if any, she may by will or otherwise give to those of my heirs that she may think best, she knowing my mind upon that subject. I am willing to leave the matter entirely with her, feeling satisfied that she will do as I have requested her to in the matter." *Held*, that wife's estate was absolute. *Davis* v. *Mailey*, 77. See, also, *In re Adams and Kensington Vestry*, 78.

6. Real and personal estate were held by two trustees, one of whom, at request of other and of third person, resigned without requiring previous payment of his demands against trust estate, and the third person was appointed in his place. The two trustees then agreed, in writing, with outgoing trustee, to apply to payment of his said claims all moneys to come into their hands as trustees "after first paying therefrom all taxes and current expenses of said property and trust." *Held*, that this was a contract to be enforced at law against the parties individually, and not a trust to be enforced in equity; and that current expenses of trust did not include construction of fire-proof buildings and unusual expenditures for protecting the property. *Taylor* v. *Davis*, 350.

ULTRA VIRES. See CORPORATION, 13, 14.

UNDUE INFLUENCE. See WILL, 5.

UNITED STATES. See ABATEMENT; CONSTITUTIONAL LAW, 1; HOMESTEAD, 2.

Under sect. 2505 of Rev. Stat., now sect. 2503, by virtue of sect. 6, of March 3d 1883, c. 121 (22 St. 521), following are exempt from duty: 1. Wearing apparel owned by passenger and in condition to be worn at once without further manufacture. 2. Brought with him as passenger, and intended for use or wear of himself or his family who accompanied him as passengers, and not for sale, or purchased or imported for other persons, or to be given away. 3. Suitable for season of year immediately approaching at time of arrival. 4. Not exceeding in quantity or quality or value what passenger was in habit of ordinarily providing for himself and family at that time, and keeping on hand for his and their reasonable wants in view of their means and habits in life, even though such articles had not been actually worn. *Astor* v. *Merritt*, 476.

UNITED STATES COURTS. See CORPORATION, 10; EQUITY, 6; ERRORS AND APPEALS, 2, 3, 6, 7; REMOVAL OF CAUSES.

1. Property taken in execution by United States marshal cannot be replevied in state court, even when belonging to third person. *Covell* v. *Heyman*, 487.

2. When jurisdiction of Circuit Court depends upon citizenship, it must plainly appear in the record. Averment that parties reside in or that firm does business in or is "of" particular state, not sufficient to show citizenship therein. *Grace* v. *Ins. Co.*, 152.

3. Where record does not show case within jurisdiction of Circuit Court, Supreme Court will notice that fact, though question not raised by parties. *Id.*

4. Goods claimed by third person having been seized on writ of attachment issued in United States Court, and remedy which third person would have had in state courts by way of writ of replevin against officer executing such process, not existing against marshal. *Held*, that United States Court would, on bill filed by claimant, grant him full relief, although he was stranger to original suit, and citizenship of parties to bill was not such as would give United States Court jurisdiction in original proceeding. *Krippendorf* v. *Hyde*, 351.

5. Widow residing in New Jersey appointed citizen of New York trustee to collect an insurance policy on husband's life, and, after paying a certain claim, invest the surplus for her benefit. The New York court granted a nonsuit because evidence showed that death was caused by suicide, *according to law of New York*. Citizen of New Jersey was afterwards substituted as trustee, at request of widow; there was evidence to show that one object in this appointment was to bring suit in United States Court, in a suit therein: *Held*, that it had jurisdiction; and that case was not within 1st or 5th sections of act of March 3d, 1875. *Ins. Co.* v. *Broughton*, 78.

6. THE RELIEF OF THE SUPREME COURT OF THE UNITED STATES, 360.

USURY. See EQUITY, 20; MORTGAGE, 6.

1. Statute prescribing rate of interest and forbidding taking of higher rate "under pain of forfeiture of entire interest so contracted," and that "if any person hereafter shall pay on any contract a higher rate * * * the same may be sued for, and recovered within 12 months of the time of such payment," confers no authority to apply usurious interest actually paid to discharge of principal debt. Suit within the 12 months exclusive remedy. *Walsh* v. *Mayer*, 487.

2. Insurance company made loan to W., and took from him promissory note for amount thereof, with interest at eight per cent., secured by mortgage, and took other notes for usurious interest. W. afterwards conveyed the property to B., who as part of consideration agreed to pay notes and mortgage given by W., and to secure performance of his agreement, executed to W. mortgage on same property. B. conveyed the property to J., and made to him warranty deed therefor, and agreed with him to pay off encumbrance thereon. *Held*, that in action of foreclosure by insurance company, defence of usury is not available to J. against mortgage given by W. *Jones* v. *Franklin Ins. Co.*, 351.

VENDOR AND VENDEE. See DEED, 4–8; EJECTMENT, 4, 5; EQUITY, 16, 17; FIXTURES, 1; MECHANICS' LIEN, 1; MORTGAGE, 11.

1. Option to purchase given to lessee, his executors, administrators and assigns, passes with lease to lessee's administrator; and if exercised by him, next of kin must be joined in conveyance from him, although he be also heir of lessee. *In re Adams and Kensington Vestry*, 78.

2. G. and wife, in consideration of conveyance to them by B. and wife of certain real estate, agreed in writing under seal, to support B., wife and daughter, and to pay certain sums of money; these and the support were computed at $5000—the consideration named in the deed. On bill filed by grantors charging non-payment of consideration and praying a sale for payment thereof: *Held*, that complaints were not entitled to such a decree; that G. and wife were bound in equity faithfully to perform the duties undertaken by them, and the land was properly chargeable with the trust; and that G. and wife should not create liens beyond those authorized by the title given. *Benscotter* v. *Green*, 79.

3. Purchaser who has taken conveyance and paid purchase-money cannot sue at law or in equity for damages on account of errors as to quantity or quality, unless such error amount to breach of some contract or warranty contained in conveyance itself or there has been fraud. *Jolliffe* v. *Baker*, 162, *and note.*

VERDICT. See NEGLIGENCE, 19.

WAGER. See CONTRACT, 22, 23.

WAGES. See ASSIGNMENT, 2; ATTACHMENT, 4; CONTRACT, 12, 13.

WAIVER. See BILLS AND NOTES, 27; CONTRACT, 5; CRIMINAL LAW, 1, 5; EVIDENCE, 14; HOMESTEAD, 11; INSURANCE, 11; MASTER AND SERVANT, 8.

WAREHOUSE RECEIPT.

1. Effect of endorsement and delivery, in one state, of private warehouse receipt for goods stored in another state is to be determined by law of latter. *Hallgarten* v. *Oldham*, 216.

2. Endorsement and delivery, by bailor, of receipt for goods stored in private warehouse, in which bailee undertakes to deliver the goods to bailor upon payment of charges, but not to hold or deliver to his order, do not pass title in goods, as against creditor of bailor, who attaches goods before notice of such endorsement has been given to bailee. *Id.*

WARRANTY. See BAILMENT; BILLS AND NOTES, 23.

Where bridge company assigned contract to build bridge, and assignee agreed to assume and pay for the work and materials already done and furnished, and false work already done was defective, but its defects could not have been discovered by inspection at time: *held*, that there was implied warranty upon part of company that the false work it had done was suitable and proper for purpose for which it was to be used. *Bridge Co.* v. *Hamilton*, 279.

WATERS AND WATER-COURSES.

In consequence of extraordinary rainfall water accumulated against railroad embankment. Thereupon company cut trenches through embankment and caused the water to flow on plaintiff's land. This was reasonably necessary for protection of their property. *Held*, that company was liable for damage, which, but for cutting of trenches, would not have happened to plaintiff. *Whalley* v. *Railway Co.*, 633, *and note.*

WILL. See CONTRACT, 13; HOMESTEAD, 2; HUSBAND AND WIFE, 15.

1. If title vests *eo instanti* at execution of paper, it is deed; but if same is not to take effect until death of maker, it is testament. *Ward* v. *Campbell*, 351.

2. In absence of plain expressions, or intent plainly inferrible, earliest time for vesting of property will be adopted, where more than one period is mentioned in will. Instance. *Crisp* v. *Crisp*, 487.

3. Where donee of power executes instrument making disposition of the

property within scope of power, but not referring to same, and in order for instrument to have its due legal effect, it must be construed as an exercise of power, it will be so regarded. *Warner* v. *Ins. Co.*, 152.

4. Power to encumber "by way of mortgage or trust deed, or otherwise, and renew the same for the purpose of raising money to pay off any and all encumbrances now on said property," is broad enough to include renewal of existnig encumbrance. *Id.*

5. Where mother, mentally enfeebled by reason of disease, and in position where one of two sons could exercise improper influence over her, made will leaving nearly all her property to this son, burden is upon him to show that such instrument was executed without exercise of undue influence. *Dale* v. *Dale*, 488.

6. Evidence offered in support of paper propounded as will showed that it was written in language not understood by supposed testatrix; that witnesses attested not at her request, but at request of one of legatees; and that she neither said nor did anything, nor was anything said or done in her presence which indicated that she knew she was making a will. *Held*, that execution of paper as will was not proven. *Miltenbergcr* v. *Miltenberger*, 488.

7. Legatee whose interest as such in establishment of will still continues, will not be allowed to testify to its due execution, notwithstanding he may not have signed as attesting witness, though statute only disqualifies him in express terms in latter case. *Id.*

8. Statute provided "every person * * * may * * * devise lands * * * acquired subsequently to the execution of his will, provided his intention to devise the same appears by the express terms of his will." Residuary devise was; "All the rest, residue and remainder of my property of every kind, nature and description, and wherever the same may be, I give, devise and bequeath unto my son." *Held*, not to pass subsequently-acquired realty. *Church* v. *Manfg. Co.*, 686.

9. Testamentary gifts prompted by personal regard of testator for legatees were given by will made while following statute was in force. "Whenever any child, grandchild or other person, having a devise or bequest of real or personal estate, shall die before the testator leaving a lineal descendant, such descendant shall take the estate, real or personal, as devisee or legatee, in the same way and manner as such devisee or legatee would have done in case he had survived the testator. *Held*, that statute applied unless contrary intent appeared. *Dom. & For. Mis. Soc.* v. *Bell*, 686.

10. Following paper was propounded as a will: "Baltimore, July 20th, 1882. In anticipation of my departure from the city of Baltimore, and to provide for possible contingencies, I hereby give, bargain and sell and transfer unto my daughter, Ann C. Kelleher, her personal representatives and assigns, all my machinery, horses, wagons, goods, chattels and effects, which I now have, or may hereafter acquire, or possess, and all moneys, claims and demands to which I am, or may be hereafter, entitled, reserving to myself the use of the same, and the right to dispose of the same otherwise, if I deem proper. Witness my hand and seal this 20th day of July, 1882."

Witness—JAMES McCOLGAN, OWEN + KERNAN. (Seal)
his
mark

Maker was nearly 80. He made expected trip and died shortly afterwards. *Held*, that paper ought to be admitted to probate, and that parol evidence respecting testator's purpose and efforts to provide for his daughter, in anticipation of his trip, were admissible to determine testamentary condition of mind. *Kelleher* v. *Kernan*, 79.

11. Influence which will avoid will must amount to force or coercion. *Layman* v. *Conrey*, 80.

12. Testator empowered his executors to continue his interest in certain firms, and to form said firms into joint-stock company or companies; to receive stock in same, in place of his interest or interests, and hold same for benefit of his estate, &c. *Held*, that executors were authorized to continue in business of these firms all property of testator embarked therein at time of his decease,

WILL.
including real estate owned by him individually and as a partner, and that held in trust by him for firm. *Ballentine* v. *Frelinghuysen*, 487.

13. That executors have power to act in forming corporation, and to convey thereto testator's interest in firms, which includes above-named real estate; and to receive stock in proportion to his interest. *Id.*

14. That in making such conveyance, lands and buildings owned by him individually, but used by firms so that they cannot be separated, for which rent was allowed, shall be valued at their fair present value as individual property. *Id.*

15. That lands owned by him which have been built upon and appropriated by firms so that they cannot be separated in use from buildings on lands of firms, will be likewise valued as his, as of time of appropriation. *Id.*

16. That lands conveyed to testator, paid for out of partnership funds and bought for use in partnership bnsiness, are held in trust for partnership. *Id.*

17. By his will H. gave to his brother "the full amount of his indebtedness to me, and the remainder of my property, both real and personal, to my sister." This debt, amounting to $4200, evidenced by note and secured by deed of trust, had in fact been transferred by testator to his sister eight months before execution of will, and his brother was not then indebted to him at all, and after his death she attempted to collect the debt. *Held*, that she should elect whether she should affirm the will and accept the devise to her, or renounce same and hold the debt. *Fitzhugh* v. *Hubbard*, 351.

18. In construction of wills parol evidence is admissible to show condition of subject-matter and surrounding circnmstances, so as to place court in position of testator; but his purpose to put devisee to election must appear from will itself. *Id.*

WITNESS. See ARBITRATION, 5; DEED, 2; EVIDENCE, 2, 13, 14, 15; WILL, 6, 7.
Where husband is party with wife in action for damages for injury by third parties to her, he is competent witness for plaintiffs, so long as he remains party to record. *Hoverson* v. *Noker*, 670.

END OF VOL. XXXII.